



California Regulatory Notice Register

REGISTER 2003, NO. 14-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

APRIL 4, 2003

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

CALIFORNIA REGULATORY NOTICE REGISTER (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by the Office of State Publishing and is offered by subscription for \$302.00 (annual price). To order, call (916) 445-5391. Periodicals postage paid at Sacramento, CA and additional mailing offices. **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Customer Coordinator, Office of State Publishing, 344 N. 7th Street, Room 104, Sacramento, CA 95814-0212.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

TITLE 2. COMMISSION ON STATE MANDATES

NOTICE OF PROPOSED RULEMAKING

The Commission on State Mandates proposes to amend the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

The Commission has not scheduled a public hearing on this proposed action. However, the Commission will hold a hearing if it receives a written request for a public hearing from any interested person or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at **5:00 p.m. on Wednesday, May 22, 2003**. The Commission will consider only comments received at the Commission's office by that time. Submit comments to:

Shirley Opie, Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Telephone: (916) 323-8211
Facsimile: (916) 445-0278

AUTHORITY AND REFERENCE

Government Code sections 17500, 17527, and 17553 authorize the Commission to adopt, amend, and rescind regulations to implement, interpret, and make specific Government Code sections 17525, 17527 subdivision (c), 17553, and Welfare and Institutions Code section 17000.6.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Commission proposes to amend sections 1181.1, 1183.01, 1183.3, and 1184.2, and adopt section 1189.11. The Commission is required by the Government Code to adopt specific provisions for

receiving and processing test claims, incorrect reduction claims and other types of filings for hearing. The Commission is also required to maintain Conflict of Interest regulations.

The purpose of the proposed action is to interpret, implement, and make specific technical amendments to the process for developing statewide cost estimates, which is the last phase of processing test claims. This action also includes amendments to the existing regulation that specifies the process for paying reimbursement claims from the State Mandates Claims Fund to align it with the statutory requirements.

In addition, Government Code section 11146.3 requires each state agency to offer ethics orientation training for all employees who are required to file statements of economic interest under the Political Reform Act. The Commission is proposing amendments to existing regulations to conform to these new requirements. Other non-substantive, conforming changes are proposed for clarity and consistency purposes.

1. Amend Section 1181.1.

The section defines key terms used in the regulations. The definition of "statewide cost estimate" is proposed because it is a term that is frequently used in the regulations.

2. Amend Section 1183.01.

The Commission is required to adopt a statewide cost estimate within 12 months following the date a test claim is filed. For purposes of calculating when a statewide cost estimate should be adopted, amendments are proposed to exclude the time between when the parameters and guidelines are issued and when initial reimbursement claims are filed with the State Controller's Office. This allows the statewide cost estimate to be based on actual statewide claims data.

3. Amend Section 1183.3.

The proposed amendments specify the current methodology used to develop statewide cost estimates.

4. Amend Section 1184.2.

The statute contains two criteria that must be met before claims can be paid from the State Mandates Claims Fund. This section is amended to align the regulation with the statute.

5. Adopt Section 1189.11.

Requirements related to providing ethics orientation and completing the training are proposed to comply with changes in the law that require training for those who must file statements of economic interest under the Political Reform Act.

**DISCLOSURES REGARDING THE
PROPOSED ACTIONS**

The Commission has made the following initial determinations:

Mandate on local agencies and school districts: None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None

Other non-discretionary cost or savings imposed upon local agencies: None

Cost or savings to any state agency: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or business: "The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action."

Adoption of these regulations will not:

- 1) create or eliminate jobs within California
- 2) create new businesses or eliminate existing businesses within California; or
- 3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None

SMALL BUSINESS IMPACT

The Commission has no jurisdiction over small businesses. Therefore, the proposed regulatory action will have no impact on small businesses.

CONSIDERATION OF ALTERNATIVES

In order to take these actions, the Commission must determine that no reasonable alternative it considered or that has otherwise been brought to its attention would be more effective in carrying out the purpose for which each action is proposed or will be as effective and less burdensome to affected private persons or small business than the proposed actions.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed actions or requests for copies of the proposed text, the initial statement of reasons, the modified text, if any, or other technical information upon which the rulemaking is based may be directed to:

Shirley Opie
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Telephone: (916) 323-8211
Facsimile: (916) 445-0278

OR

Nancy Patton
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Telephone: (916) 323-8217
Facsimile: (916) 445-0278

**AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATIONS**

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, an underscored and strike-out version of the proposed text of each regulation, the initial statement of reasons and the Commission's order to initiate rulemaking. A copy may be obtained by contacting Shirley Opie at the address or telephone number indicated above. All persons on the Commission on State Mandates interested persons mailing list will automatically be sent a copy of this notice, initial statement of reasons, and the text of the proposed regulations.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

After considering all timely and relevant comments received, the Commission may adopt the proposed regulations substantially as described in this notice. If the Commission makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public at least 15 days before the Commission adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Shirley Opie at the address indicated above. The Commission will accept written comments on the modified regulations for 15 days after the date they are made available. If modifications are made, the modified text, with changes clearly indicated, will be available to the public, for at least 15 days before the Commission adopts the regulations.

All persons submitting written comments on the proposed regulations, testifying at the public hearing if one is requested, or on the Commission on State Mandates interested persons mailing list, will automatically be sent a copy of any modifications to the proposed regulations.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Shirley Opie at the address indicated above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Commission's website at www.csm.ca.gov.

TITLE 2. GOVERNOR'S OFFICE OF CRIMINAL JUSTICE PLANNING

NOTICE IS HEREBY GIVEN THAT THE Office of Criminal Justice Planning, pursuant to the authority vested in it by Section 87306 of the Government Code, proposes amendments to its Conflict-of-Interest Code. The purpose of these amendments is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

ISSUE

Amend 2 Cal. Code of Regs. Div. 8, Ch. 9:

This regulation implements Government Code section 87300, 87302, and 87306. Every government agency is required to adopt a conflict of interest code which designates the positions within the agency which make or participate in the making of decisions which may foreseeably affect any financial interest. Conflict of interest codes require the disclosure of those interests which may be affected by any decisions participated in by the designated positions (Section 87300 and 87302). Conflict of interest codes must be amended when changes occur necessitating changes in the code (Section 87306).

Chapter 9, Division 8 of Title 2 of the California Code of Regulations, the conflict of interest code for the Office of Criminal Justice Planning, is being amended to reflect the elimination and addition of designated positions and the revision of disclosure categories. Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than 5:00 p.m. on June 2, 2003, to the Contact Person set forth below.

FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state agency or program.

Fiscal Effect on Federal Funding of State Programs. No fiscal impact exists because this proposed regulation does not effect the federal funding of any state program or agency.

AUTHORITY

Government Code Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCE

The purpose of this regulation is to implement, interpret, and make specific Government Code Sections 87300, 87302, and 87306.

CONTACT

Any inquiries concerning the proposals should be made to Shirley Wang, Office of Criminal Justice Planning, 1130 K Street, Suite 300, Sacramento, California 95814, telephone (916) 324-9102.

ADDITIONAL COMMENTS

After review of the comments, the Office of Criminal Justice Planning may adopt the amendment to the proposed regulation if its subject matter has not been substantially changed from the original description or from the text originally made available to the public. The Office of Criminal Justice Planning may make changes to the proposed regulation before its adoption.

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION

Ground Water Protection
DPR Regulation No. 03-001

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to repeal sections 6486.1, 6486.2, 6486.3, 6486.4, 6486.5, 6486.8, 6557, 6570, and 6802; amend sections 6000, 6416, and 6800; and adopt sections 6487.1, 6487.2, 6487.3, 6487.4, 6487.5, and 6609 of Title 3 of the California Code of Regulations (3 CCR). DPR also proposes to amend and renumber section 6486.6 to section 6457. The proposed regulatory action pertains to ground water protection and would replace the current "Pesticide Management Zones" (PMZs) with a new system that identifies areas susceptible to ground water contamination based on soil type and depth to ground water.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on June 3, 2003. DPR is providing a 60-day comment period for this proposed regulatory action instead of the normal 45-day period. Comments regarding this proposed action may also be transmitted via e-mail <dpr0300l@cdpr.ca.gov> or by facsimile at (916) 324-1452.

A public hearing is not scheduled. However, a public hearing will be scheduled if any interested person submits a written request for a public hearing to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Pesticide Contamination Prevention Act (Act)(Chapter 1298, Statutes of 1985, section 1) added sections 13141 through 13152 to the Food and Agricultural Code (FAC). The purpose of the Act is to prevent pesticide pollution of California's ground water aquifers that may be used to supply drinking water.

FAC section 13145(d) requires DPR to establish, by regulation, a Groundwater Protection List of pesticides that have the potential to pollute ground water. The pesticides on the Groundwater Protection List are divided into two sublists. The first, section 6800(a), contains pesticides detected in ground water or soil pursuant to FAC section 13149. The second, section 6800(b), contains pesticides exceeding specific numeric values (SNVs) established by DPR. Data submitted by pesticide registrants in accordance with FAC section 13143(a) are compared to the established SNVs. The SNVs pertain to water solubility, soil adsorption coefficient, hydrolysis, aerobic and anaerobic soil metabolism, and field dissipation. These numerical thresholds enable DPR to predict which active ingredients have the potential to leach to ground water.

If SNVs (established in section 6804) are exceeded, DPR places pesticidal active ingredients on the Groundwater Protection List in section 6800(b), provided they are labeled for use under the following conditions:

- (1) The pesticide is intended to be applied to, or injected into, the soil by ground-based application equipment or by chemigation; or
- (2) The label of the pesticide requires or recommends that the application be followed within 72 hours by flood or furrow irrigation.

The Act also requires DPR to conduct soil and ground water monitoring for those listed pesticides, maintain a database of wells sampled for pesticide residues, and formally review the continued use of pesticides found in ground water as the result of legal agricultural use. Section 6800(a) currently consists of a list of seven chemicals—atrazine, simazine, bromacil, diuron, prometon, bentazon, and norflurazon—that have been detected in ground water or soil pursuant to FAC section 13149. FAC section 13150 allows the continued sale and use of these chemicals provided that certain conditions have been met. DPR made findings that the use of certain pesticides—those containing chemicals found in ground water as a result of legal agricultural use—can be modified to prevent ground water pollution. Regulations implementing these findings—adopted on January 4, 1989 and subsequently amended on April 10, 1990, December 12, 1991, and February 21, 2001—established ground water protection restrictions (section 6416) and use requirements (section 6486) to modify the use of pesticides containing the chemicals listed in section 6800(a), except for bentazon. Atrazine, simazine, bromacil, diuron, prometon, and norflurazon are regulated in PMZs. Section 6802 defines a PMZ as “a geographic area of approximately one square mile which is sensitive to ground water pollution and which corresponds to a section as defined by base meridian, township, range, and section; or which is defined by latitude and longitude or other generally accepted geographical coordinates.”

Section 6416 requires the user to obtain a permit from the county agricultural commissioner (CAC) before purchasing and using any of these pesticides in their respective PMZs. Before a permit can be issued, the permit applicant must submit a ground water protection advisory to the CAC. The ground water protection advisory is a written statement containing specific advice for the use of the pesticide in its PMZ, and it can only be written by a licensed pest control adviser (PCA) who has attended a ground water protection training meeting sponsored by DPR within the previous two years. The use requirements prohibit all uses of atrazine and prometon within their PMZs and all noncrop uses of simazine, bromacil, and diuron within their PMZs. Agricultural, outdoor institutional, and outdoor industrial uses of pesticides containing norflurazon are prohibited in areas that are specifically

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

managed or designed to recharge ground water, and inside canal and ditch banks, within the designated PMZs for that chemical.

Using 15 years of monitoring data, including sampling from more than 20,000 wells statewide, DPR developed an extensive database on ground water contamination. DPR evaluated the technical data that have been collected since the original regulations were adopted and identified ways to prevent further pesticide movement to ground water. Using this and other information, DPR scientists constructed a computer-created statistical model—called CALVUL for California Vulnerability Model—that identifies areas susceptible to ground water contamination based on climate and soil type. This model is based on data unique to California and its pesticide regulatory program. The proposed regulatory action is a result of that evaluation.

In general, this proposed regulatory action would:

- Adopt definitions for “artificial recharge basin,” “engineered rights of way,” “evapotranspiration,” “field capacity,” “ground water protection area” (GWPA), “leaching GWPA,” “net irrigation requirement,” and “runoff GWPA” in section 6000. A GWPA would mean an area of land that has been determined by the Director to be vulnerable to the movement of pesticides to ground water, as identified in DPR document EH00-08 (Est. 09/00), entitled “Ground Water Protection Areas,” that will be incorporated by reference. This document contains both the designated leaching and runoff GWPA. The determination of a GWPA is based on factors, such as soil type, climate, and depth to the ground water, that are characteristic of areas where legally applied pesticides or their breakdown products have been detected and verified in ground water. DPR document EH00-08 is available upon request from DPR.
- Delete the definition for “groundwater protection advisory” in section 6000.
- Delete references to “Pesticide Management Zones” and “ground water protection advisory” in section 6416 (Groundwater Protection Restrictions). Add language in section 6416 stating that a permit is required for pesticides listed in section 6800(a) when these pesticides are used for agricultural, outdoor institutional, or outdoor industrial uses on one or more of the runoff or leaching GWPA, or when they are restricted for purposes other than ground water protection.
- Repeal sections 6486.1 through 6486.5, and section 6486.8 (the prohibitions on certain uses of atrazine, simazine, bromacil, diuron, prometon, and norflurazon in PMZs).
- Amend and renumber section 6486.6 (Bentazon) to section 6457 (Bentazon). Existing subsections (c) and (d) will be removed.
- Adopt section 6487.1 (Artificial Recharge Basins). This section would prohibit the use of pesticides registered for agricultural, outdoor industrial, and outdoor institutional use containing chemicals listed in section 6800(a) below the high water line inside artificial recharge basins, as defined in section 6000, unless the pesticide is applied six months or more before the basin is used to recharge ground water.
- Adopt section 6487.2 (Inside Canal and Ditch Banks). This section would prohibit the use of pesticides registered for agricultural, outdoor industrial, and outdoor institutional use containing chemicals listed in section 6800(a) below the high water line inside unlined canals and ditches, unless one of the following applies:
 - (a) The pesticide user can document that the percolation rate of the canal or ditch is equal to or less than 0.2 inches per hour (0.002 gallons per minute per square foot); or
 - (b) The pesticide is applied six months before water is run in the canal or ditch.
- Adopt section 6487.3 (Engineered Rights of Way Within Ground Water Protection Areas). This section would prohibit use of pesticides registered for agricultural, outdoor industrial, and outdoor institutional use containing chemicals listed in section 6800(a) on engineered rights-of-way within GWPA unless one of four management options can be met. These management options are listed below:
 - (a) The property operator complies with section 6487.4; or
 - (b) Any runoff from the treated right-of-way passes through a fully vegetated area adjacent, and equal in area, to the treated area, or is spread out onto an adjacent, unenclosed fallow field that is at least 300 feet long; or
 - (c) The property operator complies with any permit issued pursuant to the storm water provisions of the federal Clean Water Act pertaining to the treated area.
- Adopt section 6487.4 (Runoff Ground Water Protection Areas). This section would prohibit the use of pesticides registered for agricultural, outdoor industrial, and outdoor institutional use containing chemicals listed in section 6800(a) in runoff GWPA unless one of seven management practices can be met. These management practices are listed below. Mitigation measure (b) shall not be used for bentazon.

- (a) Soil disturbance within seven days before the pesticide is applied by using a disc, harrow, rotary tiller, or other mechanical method; or
- (b) Incorporation of the pesticide on the area treated within seven days after pesticide application by using a mechanical method or by sprinkler or low flow irrigation; or
- (c) Application of the pesticide as a band treatment immediately adjacent to the crop or row so that not more than 33 percent of the distance between rows is treated; or
- (d) Timing of the application between April 1 and July 31; or
- (e) Retention of runoff on the field; or
- (f) Retention of runoff in a holding area off the field.
- Adopt section 6487.5 (Leaching Ground Water Protection Areas). This section would prohibit the use of pesticides registered for agricultural, outdoor industrial, and outdoor institutional use that contain chemicals listed in section 6800(a) in leaching GWPA's unless any one of the following four management practices can be met for six months following application of the pesticide:
 - (a) No irrigation water is applied; or
 - (b) The pesticide is kept out of contact with leaching irrigation water; or
 - (c) Irrigation is managed so that the ratio of the amount of irrigation water applied divided by the "net irrigation requirement" is 1.33 or less.
- Subsections 6487.3(d), 6487.4(g), and 6487.5(d) would allow, with public notice, interim use of a pesticide containing a chemical listed in section 6800(a) if the Director determines that no feasible management measures can be adopted for a specific crop or site and he/she approves a study protocol with specified elements. They would also allow, with public notice, use of an alternative management practice approved by the Director based on sound science until that practice is formally adopted by regulation.
- Repeal section 6557 (Advisories for Groundwater Protection). This section describes the contents of a written advisory that a licensed PCA must provide pertaining to the use of section 6800(a)-listed chemicals.
- Repeal section 6570 (Groundwater Protection Materials Requirements). This section describes a written statement that a purchaser of section 6800(a)-listed chemicals must provide to pesticide dealers regarding use of those chemicals in PMZs.
- Adopt section 6609 (Wellhead Protection). Proposed subsection (a) would prohibit certain activities within 100 feet of a well. These activities

include mixing, loading, and storage of pesticides, rinsing of spray equipment or pesticide containers, maintenance of spray equipment that could result in spillage of pesticide residues, and application of preemergent herbicides. Proposed subsection (b) exempts wells from the requirements in subsection (a) if the well is sited above the grade of drainage or the well is protected by a berm that prevents movement of surface water to the well. Proposed subsection (c) prohibits application of preemergent herbicides within a berm surrounding a well.

- Amend section 6800 (Groundwater Protection List) by exempting products with less than seven percent diuron that are applied to foliage. An inappropriate authority citation, FAC section 12976, is being removed since this section covers adoption of regulations governing the possession, sale, or use of pesticides.
- Repeal section 6802 (Pesticide Management Zones). This section lists, by base meridian, township, range, and section, all the PMZs that have been established in the State of California.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code, because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII B of the California Constitution. DPR has also determined that some nondiscretionary costs or savings to local agencies or school districts may result from the proposed regulatory action. Some local agencies may be impacted if they conduct vegetation management programs using section 6800(a)-listed chemicals in areas that are designated as GWPA's, in artificial recharge basins, or inside canal and ditch banks. Applications of section 6800(a)-listed chemicals will be prohibited in GWPA's if certain criteria designed to prevent pesticide leaching or runoff cannot be met. In the artificial recharge basins and inside canal and ditch banks, applications will be prohibited below the high water line unless the criteria specified in proposed sections 6487.1 and 6487.2, respectively, are met. Therefore, alternative pesticides and/or revised weed management practices may be needed in some situations. Alternative methods are available. In rural counties, the suppression of weeds along county roads is generally assigned to the CAC's office. The funds needed for this purpose are reimbursed from the county road maintenance budgets. Any additional costs required by the mitigation measures would

therefore need to be incorporated into the affected counties' maintenance budgets.

Current regulations designate PMZs for 487 sections or partial sections statewide. The proposed regulations would designate 1,730 sections or partial sections as leaching GWPA, and 2,044 sections or partial sections as runoff GWPA. In the absence of precise data, it is assumed that half of the GWPA that include county roadways will have sufficient vegetative cover to allow existing spray programs to continue. Thus the affected noncrop area would increase about four-fold from the current designated PMZs from 487 to 1,887 sections and partial sections. The designated sections are estimated to include 865 leaching and 1,022 runoff GWPA. Since the regulations pertaining to leaching GWPA only apply to irrigated areas, unirrigated noncrop areas in leaching

GWPA will not be subject to any use modifications, except in the case of engineered rights-of-way. In contrast, all noncrop areas will be subject to use restrictions in runoff GWPA.

Information provided by the spray program supervisors for Fresno and Tulare counties was used to prepare an estimate for the additional costs to the counties with increased designated runoff GWPA. Fresno County is expected to require the largest increase in annual cost, at \$32,000. Nine counties are projected to require additional annual expenditures of \$9,000 to \$31,000. Eighteen other counties are expected to incur increased annual costs up to \$8,000. The statewide expected additional annual fiscal cost is \$254,000.

The following table summarizes the results:

ESTIMATED ANNUAL FISCAL IMPACT
FROM PROPOSED RUNOFF GWPA

	No. of Former PMZs	No. of GWPA		No. of GWPA		Increase (half runoff + half leaching- PMZs)	Estimated Cost \$181.55/section increase
		Leaching	Adjusted No. (half)	Runoff	Adjusted No. (half)		
CA Total	487	1,730	865	2,044	1,022	1,400	\$254,170
Fresno Co.	109	359	179.5	212	106	176.5	\$ 32,044
Merced Co.	5	221	110.5	132	66	171.5	\$ 31,136
San Joaquin Co.	7	216	108	71	35.5	136.5	\$ 24,782
Stanislaus Co.	9	244	122	24	12	125	\$ 22,694
Tulare Co.	202	79	39.5	548	274	111.5	\$ 20,243
Madera Co.	2	72	36	130	65	99	\$ 17,973
Yuba Co.	0	52	26	145	72.5	98.5	\$ 17,883
Riverside Co.	16	55	27.5	159	79.5	91	\$ 16,521
Sacramento Co.	0	1	0.5	151	75.5	76	\$ 13,798
Siskiyou Co.	0	5	2.5	93	46.5	49	\$ 8,896
Total of 18 other counties	—	—	—	—	—	—	\$ 53,830

Source: DPR data and California Environmental Protection Agency's (Cal/EPA's) Agency-Wide Economic Analysis Unit calculations

This analysis assumes that the share of county roads that fall within the boundaries of the runoff GWPA is uniform across the counties, and that cost per sprayed mile of roadway is equal for all counties.

As discussed previously in this notice, CACs issue restricted materials permits for the agricultural use of certain pesticides, including most section 6800(a)-listed chemicals in their respective PMZs. Under the proposal, permits would be issued for 6800(a)-listed chemicals in areas that are designated as GWPA. DPR has prepared two memoranda (listed in the "Documents Relied Upon" section of the Initial Statement of Reasons) that outline the estimated impact of the proposed regulations on the inspection

workloads of the CACs and on the number of permits they issue. DPR has estimated the impacts to be minor.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that it is unlikely any savings or increased costs to any state agency will result from the proposed regulatory action. Some state agencies may be impacted if they conduct vegetation management programs using section 6800(a)-listed chemicals in areas that are designated as GWPA, in artificial recharge basins, or inside canal and ditch banks. Applications of section 6800(a)-listed chemicals will be prohibited in GWPA if certain criteria designed to prevent pesticide leaching and runoff cannot be met. In the artificial recharge basins and inside canal and ditch banks, applications will be prohibited below the high water line unless the criteria specified in proposed sections 6487.1 and 6487.2, respectively, are met.

Therefore, alternative pesticides and/or revised weed management practices may be needed in some situations. Alternative methods are available.

Officials from the California Department of Transportation's Environmental Division report that alternatives to the use of chemicals have been developed and are currently being implemented. Therefore, the costs associated with alternative vegetation control measures along roads and highways, in designated runoff and leaching GWPAs, are expected to be minor.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR has made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that the adoption of this regulation may have a significant adverse economic impact on directly affected businesses. However, flexibility was built into the proposal to ensure ground water is protected. DPR made this determination based upon an economic impact assessment performed by the Cal/EPA's Agency-Wide Economic Analysis Unit. This economic impact assessment is listed in the "Documents Relied Upon" section of the Initial Statement of Reasons for this proposed regulatory action and is available from DPR. Businesses may be impacted if they conduct vegetation management programs using section 6800(a)-listed chemicals in areas that are designated as GWPAs, in artificial recharge basins, or inside canal and ditch banks. Applications of section 6800(a)-listed chemicals will be prohibited in GWPAs if certain criteria designed to prevent pesticide leaching and runoff cannot be met. In the artificial recharge basins and inside canal and ditch banks, applications will be prohibited below the high water line unless the criteria specified in proposed sections 6487.1 and 6487.2, respectively, are met. Therefore, alternative pesticides and/or revised weed management practices may be needed in some situations.

The peak annual cost, about \$5.1 million, is expected to occur in the first year of the regulation, with recurrent annual cost impacts of about \$4.0 million in subsequent years. Some of the provisions of the proposal, particularly those provisions related to canal and ditch bank mitigation measures and recharge area mitigation, could not be assessed for potential

costs. However, the costs related to alternative practices in these areas are expected to be minor.

The economic impact to the agricultural sector is expected to occur primarily in citrus and grape crops. Although the combined impacts of the runoff and leaching GWPAs will occur on less than six percent of the irrigated agricultural acreage, the costs will be incurred on 71 percent of the orange acreage, 21 percent of the grape acreage, 50 percent of the peach acreage, 44 percent of the olive acreage, and to a lesser extent, on approximately 20 additional crops. The combined costs expected to be incurred on the orange and grape crops represent approximately two-thirds of the total cost of the proposed regulation.

Growers who farm crops within the designated areas can expect to see minor increases in operating costs that will result in reductions of gross revenues. This level of reductions in gross revenue is not expected to result in noticeable shifts in crop selection. However, the impact may be sufficiently large to cause a few growers to alter their crop selection over a period of several years.

The proposed regulation should not have any significant impact on the ability of California businesses to compete with businesses in other states, since the growers potentially affected have substitutes available. Any increase in costs will be minor relative to normal market fluctuations. Overall, DPR believes the proposed regulatory action will be less prescriptive to the regulated public than the current system of PMZs since the use of all section 6800(a)-listed chemicals will be allowed in GWPAs if certain criteria can be met.

DPR has considered proposed alternatives and has determined that this proposal is the most cost-effective way of managing ground water contamination. DPR has not identified any alternatives that would lessen any adverse impact on businesses. DPR has consulted with the California Department of Food and Agriculture during the preparation of the proposed text and has considered its comments and suggestions. In addition, DPR has held workshops with the regulated public and has incorporated many of their suggested changes into the proposed text. DPR invites you to submit such proposals. Submissions may include the following considerations:

1. The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses.
2. Consolidation or simplification of compliance and reporting requirements for businesses.
3. The use of performance standards rather than prescriptive standards.
4. Exemption or partial exemption from the regulatory requirements for businesses.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation will have a significant cost impact on representative private persons or businesses in some cases. DPR staff and Cal/EPA have prepared cost estimates expected to result from the implementation of the proposed regulatory action. These cost estimates are discussed in the Cal/EPA economic impact assessment and included in the Economic and Fiscal Impact Statement (Form STD. 399) prepared by DPR.

Affected private persons and small businesses may include land owners, farming operations, and pest control businesses that wish to use 6800(a)-listed chemicals in GWPA's; pest control dealers who may be subject to reduced sales of pesticides containing these chemicals; and PCAs. Many water system applicators, such as local irrigation districts, would not face additional costs resulting from the adoption of proposed section 6487.2 (Inside Canal and Ditch Banks) because they could either switch to postemergent chemicals not listed in section 6800(a), apply listed chemicals above the high water line, or document that the percolation rate of the canal or ditch is sufficiently low to preclude the movement of the applied pesticide.

The economic impact assessment contains estimated compliance costs, including tables, for the requirements of the proposed regulation. The reader can refer to this report for a thorough discussion of these costs.

As a brief summary, the growers of oranges will experience the most significant impact of the proposed regulation since 70 percent of the statewide orange acreage is expected to fall within either a runoff or leaching GWPA. The estimated cost of compliance for these farms is approximately \$11 per acre. In cases where the irrigation water is supplied by on-site wells, there is a possibility that some additional costs will be incurred to provide wellhead protection. This cost has been estimated to be about \$130 per well, initially, and \$25 per well annually after the first year. Finally, there is a per-farm permitting cost of \$39 that is incurred as a result of the permitting process.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

DPR has determined that it is unlikely that the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

The proposed regulatory action should not have any significant adverse effect on employment. Minor changes in either direction are possible. If the selected mitigation practices result in a net increase of additional chemical treatments, there could be some increase in the demand for labor. However, this should not be sufficient to lead to a permanent increase in the number of jobs. There will be an increase in the number of recommendations written by PCAs. However, this should not lead to growth in employment since many PCAs already work under contract with farmers or chemical companies to provide advice for a specific farm.

The proposed regulation is not expected to have any impact on the creation or elimination of businesses. Any additional costs resulting from changes in application practices or pesticides selected should not have a significant adverse economic impact on farmers. Pesticide dealers currently selling the listed chemicals may experience some decreased sales that might be offset by increased sales from alternative substituted chemicals.

The proposed regulation should not have any significant impact on business expansion.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456, 12976, 13145, 14001, 14004.5, 14005, 14006, and 14102.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11456, 11501, 13145, 13150, 14102, 14004.5, 14005, and 14006.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons; and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED
OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comment on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, the proposed text of the regulation, and a public hearing; and inquiries regarding the rulemaking file may be directed to:

Mark Pepple, Senior Environmental Research
Scientist

Department of Pesticide Regulation
Environmental Monitoring Branch
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 324-4086

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above:

Linda Irokawa-Otani, Regulations Coordinator
(916) 445-3991

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>.

AVAILABILITY OF FINAL STATEMENT
OF REASONS

Following its preparation, a copy of the Final Statement of Reasons, mandated by Government Code section 11346.9(a), may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

**TITLE 8. AGRICULTURAL LABOR
RELATIONS BOARD**

Notice is hereby given that the Agricultural Labor Relations Board (ALRB or Board), pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its Conflict of Interest Code. The purpose of these amendments is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

The ALRB proposes to amend its Conflict of Interest Code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code.

This amendment ensures that the current disclosure categories accurately describe the economic interests to be disclosed on the Form 700, Statement of Economic Interests, by adding disclosure categories for selected employees. Disclosure categories 3 and 4 will be added to the following designated positions: The Chairman and all Board Members, Board Counsel, Senior Board Counsel, The Executive Secretary, The Deputy Executive Secretary, Chief Administrative Law Judge, The General Counsel, The Deputy General Counsel, and The Regional Directors. In addition, disclosure categories 3 and 4 will be added to the newly listed category of Fiscal Officer. Disclosure category 3 requires designated employees to report investments and business positions in any business entity of the type that has contracted with the agency within the past two years to provide services, equipment, supplies, etc., while disclosure category 4 requires designated employees to report interests in any business entity of the type that has arranged to rent, lease or sell premises to the agency, as well as any interests in real property located in the State of California that may foreseeably be rented, leased or sold to the ALRB as office space, storage, hearing rooms, etc.

This amendment also makes other technical changes to reflect the current organizational structure of the ALRB (e.g. by eliminating classifications that are no longer used by this agency). Copies of this amended code are available and may be requested by the contact person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than May 19, 2003, or at the conclusion of the public hearing, if requested, whichever comes later, to the contact person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than May 5, 2003, by contacting the contact person set forth below.

The ALRB has prepared a written explanation of the reasons for the proposed amendments and has available the information on which the amendments are based. Copies of the proposed amendments, the written explanation of the reasons, and the information on which the amendments are based may be obtained by contacting the contact person set forth below.

The ALRB has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any cost or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

In making these proposed amendments, the ALRB must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected persons than the proposed amendments.

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to:

J. Antonio Barbosa
Executive Secretary
Agricultural Labor Relations Board
915 Capitol Mall, Third Floor
Sacramento, CA 95814
(916) 653-3741
Fax: (916) 653-8750
e-mail: jbarbosa@alrb.ca.gov.

TITLE 8. OCCUPATIONAL SAFETY HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **May 22, 2003** at 10:00 a.m. in the Auditorium of the California State Building, 1350 Front Street, San Diego, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **May 22, 2003** following the Public Meeting in the Auditorium of the California State Building, 1350 Front Street, San Diego, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes noticed below to occupational safety and health regulations in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **May 22, 2003** following the Public Hearing in the Auditorium of the California State Building, 1350 Front Street, San Diego, California.

At the Business Meeting, the Board will conduct its monthly business.

The meeting facilities and restrooms are accessible to the physically disabled. Requests for accommodations for the disabled (assistive listening device, sign language interpreters, etc.) should be made to the Board office no later than 10 working days prior to the day of the meeting. If Paratransit services are needed, please contact the Paratransit office nearest you.

NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on May 22, 2003.

1. **TITLE 8: CONSTRUCTION SAFETY ORDERS**
Chapter 4, Subchapter 4, Article 4
Sections 1532, 1532.1, and 1535
GENERAL INDUSTRY SAFETY
ORDERS
Subchapter 7, Article 9
Sections 5198, 5200, 5201, 5207, 5211,
5214, 5218, and 5220
**Medical Evaluations for Respirator
Users**

2. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS

Chapter 4, Subchapter 7, Article 107
Section 5154.1

**Ventilation Requirements for
Laboratory-Type Hood Operations**

A description of the proposed changes are as follows:

1. TITLE 8: CONSTRUCTION SAFETY ORDERS

Chapter 4, Subchapter 4, Article 4
Sections 1532, 1532.1, and 1535

GENERAL INDUSTRY SAFETY ORDERS

Subchapter 7, Article 9

Sections 5198, 5200, 5201, 5207, 5211,
5214, 5218, and 5220

**Medical Evaluations for Respirator
Users**

INFORMATIVE DIGEST OF PROPOSED
ACTION/POLICY STATEMENT OVERVIEW

The proposal amends the general requirements of eleven substance-specific health standards that require a respirator program in accordance with specified subsections of Title 8 California Code of Regulations, General Industry Safety Orders (GISO) Section 5144, Respiratory Protection. The proposal will ensure that the respirator program requirements for each of the eleven sections include the requirements of Section 5144(e). This subsection requires an employer to provide a medical assessment for the employee before being required to use the respirator in the workplace. The proposal would amend Sections 1532, Cadmium; 1532.1, Lead; 1535, Methylenedianiline; 5198, Lead; 5200, Methylenedianiline; 5201, 1,3-Butadiene; 5207, Cadmium; 5211, Coke Oven Emissions; 5214, Inorganic Arsenic; 5218, Benzene; and 5220, Ethylene Oxide. These standards currently rely on a specific medical surveillance program to provide for this assessment. However, the medical surveillance programs are subject to a threshold based on the employee's exposure to specific concentrations of the substance, and after a specified number of days.

The proposed amendments will have the effect of requiring employers to provide an employee with an initial medical evaluation that would assess the employee's ability to use a respirator, before the employee is fit-tested or required to use the respirator in the workplace.

The current corresponding Federal OSHA standards are essentially equivalent to the existing California regulations and do not require medical assessments prior to respirator use.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

Insignificant to no costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose any significant nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

The proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

The proposed regulations do not impose unique requirements on local governments. All employers—state, local and private—will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendment to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

A description of the proposed changes are as follows:

2. TITLE 8: GENERAL INDUSTRY SAFETY
ORDERS
Chapter 4, Subchapter 7, Article 107
Section 5154.1
Ventilation Requirements for
Laboratory-Type Hood Operations

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

Existing Section 5154.1, Ventilation Requirements for Laboratory-Type Hood Operations, provides minimum requirements for the protection of employees when laboratory-type hoods are used to prevent harmful exposure. Section 5154.1 specifies minimum ventilation and performance requirements, limitations on the use of laboratory-type hoods, and several specific requirements related to concentrations of flammable materials in the hood and duct, hazards associated with the exhaust stack, blowers, biological contaminants, use with perchloric acid, placarding of

deficient hoods, devices used to indicate airflow, and a requirement that the inward flow into the hood be demonstrated.

The objectives of the proposed revisions to Section 5154.1 are to improve the performance of laboratory-type fume hoods when they are used to control harmful exposure to toxic materials or the potential risk of fire and explosion. Labor Code Section 144.6 requires the Board to adopt standards for toxic materials that assure that no employee suffers material impairment or loss of functional capacity from exposure to such materials. Laboratory-type hoods are used to control the extent to which employees are exposed to toxic materials and the risk of fire and explosion. Section 5154.1 is intended to place requirements on the use and performance of laboratory-type hoods that makes the hoods effective as devices to control these hazards. Other changes are proposed that will clarify existing requirements, but not substantively change them.

Changes are proposed to the current definitions of the terms “hazardous substance” and “laboratory-type hood” in subsection (b). The change to the term “hazardous substance” is intended to clarify that hazardous substances are those likely to cause injury or illness in the form and manner used, and not substantively alter the meaning of the term. The term “laboratory-type hood” is changed to indicate that laboratory-type hoods are used to contain hazardous substances as compared with the current description as a device in which they are used. This change is intended to make the definition of “laboratory-type hood” consistent with the change to the term “hazardous substance.”

Subsection (c), Ventilation Rates, is changed by adding an option to operate the laboratory-type hood at a reduced average face velocity of 60 fpm if the hood is not being accessed by an operator and other specified conditions are met. The effect of this change will be to provide a reduced ventilation rate while not compromising the ability of the laboratory-type hood to contain the hazardous substances in the hood. A non-substantive change is also proposed to change the current velocity units from “linear feet per minute” to “feet per minute”. This change will make the velocity unit consistent with the units used in other ventilation standards.

The requirement in subsection (e)(2) to install sash closure restrictions is changed to permit hoods to operate without a permanent sash stop, provided other openings into the hood such as the space under an airfoil are sufficient to ventilate the hood for explosion control. The effect of this change will be to eliminate the need for installing unnecessary sash stops in these cases.

The requirements in subsection (e)(3) are changed by replacing the current requirement for a qualitative airflow indicator to a requirement for a quantitative indicator. The requirement for inward airflow demonstration is changed to reference a specific procedure for airflow demonstration and velocity measurement and that this demonstration is required to be conducted on an annual basis, as well as at installation, repairs or renovation, and the addition of large equipment into the hood. The change includes an exception permitting biannual airflow demonstration and velocity measurement if a calibration and maintenance program is in place for the quantitative indicator. The effect of this change will be to provide the hood user with a means of detecting changes in the airflow into the hood which cannot be detected with qualitative indicators, and which can cause significant reduction in the ability of the hood to control harmful exposure. The effect of the requirement for a specific procedure to demonstrate inward airflow on an annual basis will be to improve the reliability of the airflow demonstration to detect hoods with inadequate capture and containment characteristics initially and over time.

The requirement at subsection (e)(7) specifying construction materials is changed to include references to more recent polymer materials which are suitable for construction of laboratory-hoods that are used in perchloric acid evaporation processes. This change is not intended to substantively alter the current requirement. The effect of this change is to reduce uncertainty when these more recent materials are used.

The proposal adds a new subsection regarding hood operator qualifications. The subsection requires that employers take steps to ensure that employees understand the functional characteristics of the hood and are able to use the hood safely. The subsection requires that the employees be familiar with the performance testing requirements for the hood and can determine when the hood was last tested. The effect of this change will be to reduce the risk that employees use laboratory-type hoods in an unsafe manner, the employee is unaware that required performance tests have not been performed, or that the hood is currently operating in an unsafe manner.

These amendments to Title 8 CCR Section 5154.1 are proposed pursuant the authority granted to the Occupational Safety and Health Standards Board in Labor Code Section 142.3.

DOCUMENTS INCORPORATED BY REFERENCE

- Section 6, Flow Visualization and Velocity Procedure, American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., ANSI/ASHRAE 110-1995, Method of Testing Performance of Laboratory Fume Hoods.

- Section 7, Tracer Gas Test Procedure, American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., ANSI/ASHRAE 110-1995, Method of Testing Performance of Laboratory Fume Hoods.

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of these documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No significant costs or savings to state agencies will result as a consequence of the proposed action. The change proposed to subsection (e)(3) will require the installation of a quantitative airflow indicator on those hoods without such indicators. A representative of a major laboratory hood manufacturer attended several advisory committee meetings and estimated that the majority of hoods installed in the last 5 to 7 years had installed flow indicators. He also estimated that approximately 50% of hoods older than this had installed indicators. The cost for the indicator is the sum of the components' cost and labor cost for installation. Simple diaphragm gages, inclined manometers, and vane indicators with installation kits range from \$22 to \$70. Labor costs are estimated to range from \$50 to \$100 per hour and installation time one to three hours. The estimated one time costs for this indicator is therefore between \$72 and \$370. Subsection (e)(3) is also changed to require a specific procedure for airflow demonstration and velocity measurement and this demonstration is required to be conducted on an annual basis, as well as at installation, repairs or renovation, and the addition of large equipment into the hood. The change includes a "note" permitting biannual airflow demonstration and airflow measurement if a calibration and maintenance program is in place for the quantitative indicator. The change will require both small and gross smoke challenges on an annual or biannual basis. The cost associated with this is the sum of the costs of the smoke generating equipment and labor for performing the test. The equipment costs are estimated at approximately \$7 and the labor between \$50 and \$100 for the test. The cost estimate is therefore between \$57 and \$107.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The change proposed to subsection (e)(3) will require the installation of a quantitative airflow indicator on those hoods without such indicators. A representative of a major laboratory hood manufacturer attended several advisory committee meetings and estimated that the majority of hoods installed in the last 5 to 7 years had installed flow indicators. He also estimated that approximately 50% of hoods older than this had installed indicators. The cost for the indicator is the sum of the components' cost and labor cost for installation. Simple diaphragm gages, inclined manometers, and vane indicators with installation kits range from \$22 to \$70. Labor costs are estimated to range from \$50 to \$100 per hour and installation time one to three hours. The estimated one time costs for this indicator is therefore between \$72 and \$370. Subsection (e)(3) is also changed to require a specific procedure for airflow demonstration and velocity measurement and this demonstration is required to be conducted on an annual basis, as well as at installation, repairs or renovation, and the addition of large equipment into the hood. The change includes an exception permitting biannual airflow demonstration and airflow measurement if a calibration and maintenance program is in place for the quantitative indicator. The change will require both small and gross smoke challenges on an annual or biannual basis. The cost associated with this is the sum of the costs of the smoke generating equipment and labor for performing the test. The equipment costs are estimated at approximately \$7 and the labor between \$50 and \$100 for the test. The cost estimate is therefore between \$57 and \$107.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose a significant nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because this regulation does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All employers—state, local and private—will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The above proposals do not contain building standards as defined by Health and Safety Code Section 18909.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than May 16, 2003. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on May 22, 2003 will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@hq.dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to John D. MacLeod, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

TITLE 12. MILITARY VETERANS AFFAIRS

NOTICE OF PROPOSED ACTION

The California Department of Veterans Affairs ("Department") proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department will hold a public hearing starting at **9:00 a.m. on May 28, 2003**, in Grant Hall located in the Recreation Building at the Veterans Home of California—Yountville, 110 California Drive, Yountville, California. Grant Hall is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at **5 p.m. on Monday, May 19, 2003**. The Department will consider only comments received at the Department Headquarters' offices by that time. Submit comments to: John H. McCardle, Staff Counsel, 1227 "O" Street, Suite 306, Sacramento, California 95814.

AUTHORITY AND REFERENCES

The authority and reference is Military and Veterans Code, Division 5, Chapter 1, section 1035.6. Military and Veterans Code section 1035.6 requires the Department to "promulgate regulations specifying the costs that are in excess of the member contribution fee and constitute the unreimbursed cost of care."

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Senate Bill 1281, approved and filed on September 11, 2002, adds sections 1035.6 and 1035.7 to the Military and Veterans Code. Military and Veterans Code section 1035.6(b) requires the Department to "promulgate regulations specifying the costs that are in excess of the member contribution fee and constitute the unreimbursed cost of care."

The Department proposes to add sections 506 and 507 to Title 12 of the California Code of Regulations (CCR). These sections will specify the costs that are in excess of the member contribution fee and constitute

the unreimbursed cost of care by establishing the basis upon which unreimbursed cost of care is calculated.

It has long been the practice of the Department to calculate a deceased resident's unreimbursed cost of care by reducing the total charges (debits), against a resident's account, by the credits for amounts received on the resident's behalf.

Total charges against a resident's account include a per-diem charge based on a members level of care and admission status for all services provided by the home; actual medical costs rendered to the member that are paid to contracted or non-contracted medical providers by the home; and any co-payments or deductibles paid by the home for treatment covered under the member's medical insurance. The sum of these charges total the "member account cost items" under the proposed regulations.

There are generally three sources of funds by which the cost of a Veteran's stay in a California Veterans Home are paid: Member fees as proscribed by Military and Veterans Code section 1012.3; various veterans benefits (e.g., aid and attendance payments and USDVA per diem) as provided in Title 38 of the United States Code; and other governmental benefits provided to offset the cost of health care (e.g., Medi-Cal and Medicare). The total of these items are used to offset the member account cost items to calculate the unreimbursed cost of care.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: The Agency is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or

- (3) Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Effect on small businesses: None. This regulation does not affect small businesses. This regulation only affects veterans living in the Veterans Homes of California.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Fred Chow, Chief of Management Services
California Department of Veterans Affairs
1227 "O" Street
Sacramento, CA 95814
Telephone: (916) 653-0603

The backup contact person for these inquiries is:

John H. McCardle, Staff Counsel
California Department of Veterans Affairs
1227 "O" Street, Suite 306
Sacramento, CA 95814
Telephone: (916) 653-1406

Questions on the substance of the proposed regulations may be directed to either Mr. McCardle or Mr. Chow.

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or the information upon which the rulemaking is based to Mr. Chow at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial

statement of reasons. Copies may be obtained by contacting Mr. Chow at the address or phone number listed above.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Fred Chow at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL
STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mr. Chow at the above address.

**AVAILABILITY OF DOCUMENTS
ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations, in underline and strikeout, can be accessed through our website at www.CDVA.CA.Gov.

**TITLE 14. DEPARTMENT OF
BOATING AND WATERWAYS**

NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the California Department of Boating and Waterways (Department) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Department proposes to add Section 8100, Title 14, California Code of Regulations, relating to the selection process for private architectural, landscape architectural, engineering, environmental, land surveying, and construction management firms.

WRITTEN COMMENTS

A written comment period has been established commencing on April 4, 2003 and terminating on May 20, 2003. Any interested person may present

written comments concerning the proposed regulation no later than **5:00 p.m. on May 20, 2003**. Please submit your written comments to:

Mr. Mike Sotelo
California Department of Boating and Waterways
2000 Evergreen Street, Suite 100
Sacramento, California, 95815
FAX: (916) 263-0648

PUBLIC HEARING

No public hearing on this matter has been scheduled. Anyone wishing a public hearing must submit a request in writing, pursuant to Section 11346.8 of the Government Code, to the Department at least 15 days before the end of the written comment period. Such request should be addressed to the Department contact person identified in this Notice and should specify the proposed Selection Process for Private Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying, and Construction Management Firms Regulations for which the hearing is being requested.

AUTHORITY AND REFERENCE

This regulatory action is taken pursuant to the authority vested by Government Code Section 4526. The purpose of the proposed regulations is to implement, interpret and make specific Government Code Section 4526.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Existing law requires the Department to adopt, by regulation, procedures that assure private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable process to public agencies. This proposal is intended to implement and make specific the Department's selection process for private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services. This proposal specifies the types of contracts subject to this Article. This proposal clarifies the selection criteria that may be used, what the request for qualifications shall include, and the process for selection of qualified firms and negotiation of a satisfactory contract. This proposal specifies the process for amending a contract and for contracting in phases when the Department determines it is necessary or desirable for a project to be performed in separate phases. This proposal clarifies that the Department may award a contract on the basis of competitive bids. Finally, this proposal specifies unlawful acts prohibited as part of the selection process for these contracts.

**IMPACT ON LOCAL AGENCIES
OR SCHOOL DISTRICTS**

The Department has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. The Department has also determined that no nondiscretionary costs or savings to local agencies will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

The Department has determined that no savings or any increased costs to any State agency will result from this regulatory action.

**COSTS OR SAVINGS TO FEDERAL FUNDING
TO THE STATE**

The Department has determined that this regulatory action imposes no cost or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

The Department has initially determined that this regulatory action will have no effect on housing costs.

**SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT DIRECTLY
AFFECTING BUSINESSES**

The Department has made the initial determination that adoption of this proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**IMPACT ON THE CREATION, ELIMINATION,
OR EXPANSION OF JOBS**

The Department had determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business in the State of California.

REPORTING REQUIREMENTS

The proposed regulatory action makes no reporting requirements upon businesses.

**COST IMPACT ON REPRESENTATIVE PRIVATE
PERSONS OR BUSINESSES**

The Department is not aware of any cost impacts that a representative private person or business would

necessarily incur in reasonable compliance with the proposed regulatory action.

**DETERMINATION OF EFFECT
ON SMALL BUSINESSES**

The Department has determined that adoption of these proposed regulations do not adversely impact small businesses. These proposed regulations serve to clarify and make specific the Department's selection process for private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services. These proposed regulations do not mandate actions upon private persons or businesses, but rather clarify existing statutory mandates.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The Department invites interested persons to present statements or arguments regarding alternatives to the proposed regulations during the comment period.

**AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATIONS**

The Department has prepared an Initial Statement of Reasons, and has available the express terms of the proposed regulatory action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the Department contact person named in this notice. The information upon which the Department relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

After the close of the comment period, the Department may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If the Department does make changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the Department contact person named in this notice. The Department will accept written comments on any changes for 15 days after the modified text is made available.

CONTACT PERSON

Written comments about the proposed regulatory action, requests for a copy of the Initial Statement of

Reasons and/or the proposed text of the regulation, inquiries regarding the rulemaking file, and questions on the substance of the proposed regulatory action may be directed to:

Mr. Mike Sotelo
California Department of Boating and Waterways
2000 Evergreen Street, Suite 100
Sacramento, California, 95815
Telephone: (916) 263-0787
FAX: (916) 263-0648

Note: In the event the contact person is unavailable, inquiries should be directed to the following substitute contact person at the same address as noted above:

David Johnson, Regulations Coordinator
Telephone: (916) 263-0780
djohnson@dbw.ca.gov

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on the Department's Internet Homepage <http://www.dbw.ca.gov>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on the Department's Internet Homepage and accessed at <http://www.dbw.ca.gov>.

TITLE 16. PHYSICAL THERAPY BOARD OF CALIFORNIA

NOTICE IS HEREBY GIVEN that the Physical Therapy Board of California is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Doubletree Hotel at 100 The City Drive in Orange, California at 10:00 a.m. on Tuesday, May 20, 2003. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Physical Therapy Board of California at its office not later than 5:00 p.m. on May 19, 2003 or must be received at the hearing. The Physical Therapy Board of California, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or

oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by section 2615 of the Business and Professions Code to implement, interpret or make specific Sections 2615 and 2620.5, the Physical Therapy Board of California is considering changes to Division 13.2 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

(1) Add section 1399.70

A report was prepared to comply with the requirements of Section 2620.5(d) of the Business and Professions Code (code) which was added to the code by Chapter 991, Statutes of 1998, as a result of the Sunset Review of the Physical Therapy Board of California (Board) by the Legislature.

The new sub-section of the Business and Professions Code directed the Board to undertake a study assessing the need for, and potential alternatives to, the certification requirement for physical therapists to perform tissue penetration for the purpose of evaluating neuromuscular performance.

The Board found that the performance of electromyography by certified physical therapists has not resulted in any injury to the public. Consequently, the Board could not identify any valid reason to end the ability of physical therapists that specialize in the practice of electromyography to perform the studies.

However, during the course of the study the Board did identify three complaints regarding the performance of electromyography that have been filed against physical therapists. None of the complaints included allegations that a patient had been injured or that the physical therapist was negligent or incompetent. Physician and surgeons filed two of these complaints alleging the report of findings that they received represented a diagnosis. The Board's investigation of these complaints determined that the report of findings did not include a diagnosis, and that the physical therapist had submitted the report to the physician and surgeon in order that a diagnosis could be made.

The report consequently prompted the need for regulation requiring all certified electromyographers include in their reports to the diagnosing physician and surgeon that the findings reported to the patient's physician shall include the following statement: "This study has been performed in accordance with the California Business and Professions Code, and with the California Code of Regulations. The findings in this report do not represent diagnostic interpretations or medical diagnosis. The results of the electromyo-

graphic examination by the certified electromyographer are intended for integration by the physician and surgeon with the patient's history, clinical examination, and the results of any other tests performed in establishing a medical diagnosis."

This regulatory requirement would provide with certainty that the purpose of the evaluative report is solely to assist the physician and surgeon in providing a medical diagnosis to the patient.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses: The board has determined that this regulatory proposal would not have an impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Private Persons or Entities: The Physical Therapy Board of California is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Housing Costs: None

EFFECT ON SMALL BUSINESS

The Physical Therapy Board of California has determined that the proposed regulations would not affect small businesses and would only effect individual licensees certified to perform electromyography.

CONSIDERATION OF ALTERNATIVES

The Physical Therapy Board of California must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome on affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of the reasons and all of the other information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Physical Therapy Board of California at 1418 Howe Avenue, Suite 16, Sacramento, California 95825.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries concerning the proposed administrative action or the substance of the proposed regulations may be addressed to:

Rebecca Marco
1418 Howe Avenue, Suite 16
Sacramento, CA 95825
(916) 561-8260
(916) 263-2560—Fax Number
Rebecca_Marco@dca.ca.gov

The backup contact person is:

Steve Hartzell
1418 Howe Avenue, Suite 16
Sacramento, CA 95825
(916) 561-8200
(916) 263-2560—Fax Number
Steve_Hartzell@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Rebecca Marco at (916) 561-8260.

Website Access: Materials regarding this proposal can be found at www.ptb.ca.gov.

TITLE 17. AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE OZONE TRANSPORT MITIGATION REGULATIONS

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the ozone transport mitigation regulation.

DATE: May 22, 2003

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Central Valley Auditorium, Second Floor
1001 I Street
Sacramento, CA 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., May 22, 2003 and may continue at 8:30 a.m., May 23, 2003. This item may not be considered until May 23, 2003. Please consult the agenda for the meeting, which will be available at least 10 days before May 22, 2003, to determine the day on which this item will be considered.

If you have special accommodation or language needs, please contact ARB's Clerk of the Board at (916) 322-5594, or sdorias@arb.ca.gov as soon as possible. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to title 17, California Code of Regulations (CCR), sections 70600 and 70601.

BACKGROUND

The goal of the California Clean Air Act (CCAA or Act) is to attain health-based air quality standards by the earliest practical date. The Act requires that each air pollution or air quality management district (district) not attaining the State standards for ozone, carbon monoxide, sulfur dioxide, or nitrogen dioxide develop and implement an air quality plan designed to achieve those standards. For ozone, one of California's most persistent and serious air quality problems, the Act specifically recognizes that districts need to mitigate the impact of pollutants that they generate and transport downwind.

The movement of air pollutants from one air basin to another is referred to as "transport." The Act, in Health and Safety Code section 39610, directs the Board to identify transport couples, to assess the relative contribution of upwind emissions on down-

wind ozone concentrations to the extent permitted by available data, and to establish mitigation requirements.

In 1990, ARB adopted both the transport identification regulation and the transport mitigation regulations. The transport identification regulation, which is set forth in title 17, CCR, section 70500, lists each "transport couple" identified by the Board. The transport couple includes the upwind air basin or planning area and the downwind receptor area. The transport mitigation regulations, set forth in title 17, CCR, sections 70600 and 70601, establish the emission control requirements applicable to districts located in the upwind areas identified in section 70500(c).

The current mitigation regulations contains two key provisions. First, the application of best available retrofit control technology (BARCT) must be utilized on existing stationary sources. At a minimum, BARCT was to be applied to those sources that represented 75% of the 1987 actual reactive hydrocarbon and oxides of nitrogen emissions inventory for permitted stationary sources by January 1, 1994. This provision has been fully implemented. The second requirement is that upwind districts include sufficient measures in their ozone attainment plan to mitigate their impact on specified downwind areas. The second requirement is a long-term goal that relies on the availability of modeled attainment demonstrations for the State ozone standard.

The original mitigation regulations also included a requirement that accelerated the implementation of the "no net increase" permitting requirements for new and expanding stationary sources already required under the CCAA. However, changes made to the Act in 1992 amended the original "no net increase" permitting requirements that applied to all new and expanding stationary sources for all but extreme ozone nonattainment areas. In its place, moderate, serious, and severe ozone nonattainment areas were allowed to permit incrementally smaller stationary sources without mitigating, or fully offsetting, their air quality impacts. The "no net increase" permitting requirements were subsequently removed from the mitigation regulations in 1993 to be consistent with the changes made to the CCAA.

In 2001, the Board raised questions about the continuing effectiveness of current mitigation requirements, which have remained unchanged since 1993. The Board directed staff to develop regulatory proposals to strengthen the transport mitigation requirements. One issue raised by the Board is that some upwind districts have less stringent "no net increase" permitting requirements under the Act than their downwind neighbors. There is a need for upwind and downwind districts to take equivalent actions to

mitigate new emission increases. Second, district compliance with mitigation requirements is presently reviewed every three years as part of the triennial review of attainment plans. There is a need to provide a more timely and structured review process that ensures that upwind districts are doing all they can to reduce emissions to achieve State standards in both upwind and downwind areas. Finally, the ARB staff has determined that the near-term, minimum BARCT requirements mentioned above have been fully implemented for a number of years and the regulations should be updated to reflect this.

PROPOSED AMENDMENTS

Based upon staff review of the ozone transport mitigation regulations and the consideration of air district and public input on strategies considered, the ARB staff is proposing the following amendments to the ozone transport mitigation regulations: (1) require that upwind districts have the same "no net increase" permitting thresholds as their downwind districts; (2) add requirements to ensure that upwind districts are adopting and implementing "all feasible measures" as expeditiously as possible; (3) delete outdated BARCT requirements; and (4) expand the existing provision that allows a limitation on the application of BARCT to include "all feasible measures" and take into account updated transport assessments. These changes would amend sections 70600 and 70601, title 17, CCR and are summarized below.

NEW SOURCE REVIEW PERMITTING REQUIREMENTS

ARB staff is proposing to require equal New Source Review (NSR) "no net increase" thresholds for sources in upwind and downwind areas. The goal of the NSR permitting program is to maintain air quality progress while accommodating economic growth and expansion. This is achieved by offsetting growth in emission increases from new and expanding stationary sources with emission reductions not otherwise required by law, and is known as the concept of "no net increase."

In several cases, upwind areas have less stringent permitting requirements under the Act than their downwind neighbors. Currently, a district's "no net increase" threshold (i.e., the quantity of emissions that makes a source subject to it) is specified by the Act, based on its nonattainment classification for the State ozone standard. Areas classified as moderate have a "potential to emit" threshold of 25 tons per year, areas classified as serious have a threshold of 15 tons per year, and areas classified as severe have a threshold of 10 tons per year. Areas classified as extreme, which includes only the South Coast Air Basin, have no threshold; that is, all sources are subject to the "no net increase" requirement.

The ARB staff proposal that "no net increase" thresholds for upwind districts be as stringent as those that exist for their downwind districts would help ensure that both upwind and downwind neighbors are taking comparable actions to mitigate emissions from new and expanding stationary sources.

The proposed amendments would affect the Bay Area Air Quality Management District (BAAQMD) and the five districts located in the Broader Sacramento Area. They would be required to amend their "no net increase" thresholds from 15 tons per year to 10 tons per year by December 31, 2004. This will result in these districts achieving the same "no net increase" threshold levels as their downwind neighbor, the San Joaquin Valley Air Pollution Control District.

ARB staff is not proposing that districts upwind of the South Coast be included in this permitting requirement because of South Coast's classification of extreme. As noted, there is no threshold for an extreme area due to the severity of its air quality problem. The unique status of this downwind area, combined with the localized nature of the transport impacts from the upwind areas of Santa Barbara and Ventura, make the applicability of this concept inappropriate in this case.

No changes are proposed to the thresholds for applying best available control technology (BACT), which are also part of the NSR programs.

ALL FEASIBLE MEASURES

ARB staff is also proposing to add language requiring the implementation of "all feasible measures" as expeditiously as practicable. Under the CCAA, districts that are not attaining the State ozone standard are required to include every feasible measure in the triennial update to each district's ozone attainment plan. Also, districts have broad responsibility under the CCAA to reduce their emissions in both the upwind and downwind areas. Health and Safety Code section 40912 requires districts responsible for transport to provide for the attainment and maintenance of the State ozone standard in both the upwind and downwind district.

The goal of this proposed change is to provide for a more timely review process that, in combination with the requirements of the CCAA, ensures that upwind districts are responsible for reducing their emissions to achieve the State ozone standard in the downwind districts. The proposed amendments would: (1) add a requirement to the transport mitigation regulations that districts adopt all feasible measures as expeditiously as practical, (2) add an annual review, a consultation and public comment forum, and a reporting process for the implementation of "all feasible measures" between three-year planning cycles, (3) add a definition of "all feasible measures" and "ozone precursors," (4) expand the limitation procedure currently provided for

BARCT adoption to allow the same alternative compliance path for “all feasible measures,” and (5) add an additional option to the alternative compliance path that allows districts to demonstrate in their attainment plan that their transport impact is inconsequential.

BEST AVAILABLE RETROFIT TECHNOLOGY

ARB staff is proposing to delete outdated language concerning BARCT requirements. The current mitigation regulation contains requirements for the application of BARCT to permitted stationary sources that represent 75% of the 1987 actual reactive hydrocarbon and nitrogen oxides emissions inventory for permitted stationary sources by 1994. The purpose of this requirement was to accelerate the application of BARCT to permitted stationary sources. This requirement has been fully implemented for a number of years, and is now obsolete. No other changes are proposed to the existing requirement for BARCT on existing stationary sources.

COMPARABLE FEDERAL REGULATION

There are no comparable federal regulations for the adoption of “all feasible measures” in upwind, intrastate transport areas. Although there are comparable federal regulations for NSR programs, more health-protective programs for NSR are required under the CCAA in Health and Safety Code sections 40918–40920 than under the federal Clean Air Act and United States Environmental Protection Agency’s (U.S. EPA) implementing regulations. State requirements have more stringent permitting thresholds and technology requirements than federal NSR requirements and have been incorporated into the federally required State Implementation Plan (SIP) approved by the U.S. EPA. The stringent State NSR provision, therefore, replaces federal NSR requirements. The proposed transport mitigation requirements affect existing State NSR requirements to enable the ARB and the districts to comply with CCAA transport requirements.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSONS

The ARB staff has prepared a Staff Report for the proposed regulatory action. This “Initial Statement of Reasons” (ISOR), includes a summary of the potential environmental and economic impacts of the proposal, environmental justice considerations, and supporting technical documentation. The staff report is entitled: “Initial Statement of Reasons for Rulemaking, Proposed 2003 Amendments to Ozone Transport Mitigation Regulations.”

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strike-out format to allow for comparison with the existing regulations,

may be obtained from the ARB’s Public Information Office, Environmental Services Center, 1001 “I” Street, First Floor, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to our scheduled hearing (May 22, 2003).

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the web site listed below.

Inquires concerning the substance of the proposed regulations may be directed to the designated agency contact persons: Merrin Bueto, Air Pollution Specialist, at (916) 322-6013 or via email at mbueto@arb.ca.gov, or Gayle Sweigert, Manager, Air Quality Analysis Section, Planning and Technical Support Division, (916) 322-6923 or via email at gsweigert@arb.ca.gov.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. The material is available for inspection upon request to the contact persons.

If you are a person with disability and desire to obtain this document in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/trans03/trans03.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board’s Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulations are presented below.

The Executive Officer has determined that the proposed regulatory action will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any State agency or in federal funding to the State, costs or mandate to any local agency or school district whether or not reimbursable by the State pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other non-discretionary savings to state or local agencies except as noted below.

The proposed requirements for an annual review, consultative and public comment period, and reporting requirements for the adoption of all feasible measures are not anticipated to impose significant additional costs on local and state agencies, since both local and state agencies can absorb the costs within the existing budget. If the proposed amendments will impose a mandate upon, and create costs to, the air districts responsible for transport, reimbursements from the state to the districts are not required pursuant to Government Code sections 17500 et seq., and section 6 of article XIIB of the California Constitution because the districts have the authority to levy fees sufficient to pay for the mandated program upon permitted stationary sources which emit the pollutants (Health and Safety Code section 42311).

Although the proposed regulatory action will not result in a significant increase in costs to the State, future regulations may be necessary to achieve or maintain the proposed standards. When the districts propose to adopt such regulations, any associated costs will be examined in accordance with statutory requirements and justified by the benefit to human health, public welfare, or the environment.

The Executive Officer has also determined that the proposed regulatory action for NSR requirements may affect businesses wanting to expand in the Bay Area and Broader Sacramento area. These businesses may potentially be subject to stricter thresholds if they chose to modify their operations; however, any costs associated with the stricter thresholds are anticipated to be minimal.

Furthermore, the Executive Officer's initial assessment is that the proposed regulatory action will not adversely affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within California, or the expansion of businesses currently doing business within California. Although the NSR requirements may impose stricter thresholds, there is no indication that these businesses will be unable to operate. A full assessment of the economic impact of the proposed regulatory action can be found in the Staff Report (ISOR).

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses. However, it may affect the ability of some California businesses to compete with businesses in other states, or on representative private persons due to the costs associated with the districts' adoption and implementation of "all feasible measures."

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. Because

the adoption of "all feasible measures," does not mandate the implementation of specific technologies and districts have flexibility in their individual rulemaking, the ARB has determined that there are no cost impacts that a representative private person or business would necessarily incur until a district adopts and implements a "new" feasible measure. At that time, the districts must conduct a socio-economic impact analysis and determine the impacts on business. Only those businesses located within the areas of origin of transported air pollutants, as identified in section 70500(c), may be affected by the incorporation of "all feasible measures." Additionally, upwind districts are already required under the CCAA to implement and adopt "all feasible measures."

California business should be able to absorb any costs of the proposed regulatory action without significant adverse impacts on their profitability. Some businesses would potentially experience a greater reduction in their profitability than others; however, the impact should remain absorbable.

Finally, the Executive Officer has also determined that the proposed regulatory action may affect small business.

Before taking final action on the proposed regulatory action, the Board must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by email before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received no later than 12:00 noon, May 21, 2003, and addressed to the following:

Postal Mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 "I" Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to trans03@listserv.arb.ca.gov and received at the ARB no later than 12:00 noon, May 21, 2003.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB no later than 12:00 noon, May 21, 2003.

The Board requests, but does not require, 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB

encourages members of the public to bring any suggestions for modification of the proposed regulatory action to the attention of staff in advance of the hearing.

STATUTORY AUTHORITY

This regulatory action is proposed under that authority granted in sections 39600, 39601 and 39610(b) of the Health and Safety Code. This action is proposed to implement, interpret and make specific sections 39610, 40912, 40913, 40921 and 41503 of the Health and Safety Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code. Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with nonsubstantive or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications related to "all feasible measures," BARCT, and stationary source permitting programs if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action.

In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted. The public may request a copy of the modified regulatory text from the Board's Public Information Office, Environmental Services Center, 1001 "I" Street, First Floor, Sacramento, California 95814, (916) 322-2990.

TITLE 22. DEPARTMENT OF SOCIAL SERVICES

NOTICE OF PROPOSED CHANGES IN REGULATIONS

ITEM #3 Minor Parent Regulations ORD #0103-02

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held May 21, 2003, as follows:

May 21, 2003
State Office Building #9
744 P Street, Auditorium
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The CDSS will adjourn the hearings immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify CDSS at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by telefax to the address/number listed below. All comments must be received by 5:00 p.m. on May 21, 2003.

The CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice and the proposed regulations are also available online at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which CDSS considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT

Anthony J. Velasquez, Chief
Office of Regulations Development
California Department of Social Services
744 P Street, MS 7-192
Sacramento, California 95814
TELEPHONE: (916) 657-2586
TELEFAX: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Title 22, Division 6, Chapter 5 (Group Homes), Sections 84001 (Definitions), 84065.2 (Personnel Duties), 84065.5 (Staff/Child Ratios), and 84065.7 (Night Supervision); and Chapter 5 (Group Homes) Subchapter 2 (Care for Children Under the Age of Six Years), Sections 84200 (General), 84201 (Definitions), 84222 (Plan of Operation), 84265 (Personnel Requirements), 84265.1 (Personnel Duties), 84268.1 (Intake

Procedures), 84268.3 (Modifications to Needs and Services Plan), 84272 (Personal Rights), 84272.1 (Discipline Policies and Procedures), 84274 (Transportation), 84275 (Health-Related Services), 84276 (Food Service), 84277 (Personal Services), 84278 (Responsibility for Providing Care and Supervision), 84278.1 (Sanitation Requirements), 84279 (Planned Activities), 84287 (Buildings and Grounds), and 84287.2 (Outdoor Activity Space).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

These regulations implement Assembly Bill (AB) 2773, (Chapter 1056, Statutes of 1998), which added Sections 1530.8(a)(2) and (d)(1) through (4) to the Health and Safety Code. These additions require the California Department of Social Services (CDSS) to adopt regulations regarding minor parent and infant programs that served children who meet all the following characteristics:

- Are younger than six years of age.
- Are dependents of the court, nondependents, voluntary and/or regional center placements.
- Reside in a group home with their minor parents.
- Have a primary caregiver who is the minor parent.

As required by the statute, CDSS consulted with representatives from a public interest law firm specializing in children's issues and with provider organizations, using national standards as guidelines.

The CDSS initially developed minor parent regulations in 1999, (ORD #0999-18). Based on concerns raised during the public hearing, primarily by the California Alliance of Children and Family Services (CACFS), the CDSS withdrew the proposed regulations with the concurrence of CACFS.

The CDSS met with CACFS to discuss their concerns and offer alternative approaches. Proposed regulations were revised with the providers' main issues in mind. Regulations were revised only in areas where the health and safety of children in care were not jeopardized.

Current regulations apply particular standards to all group homes that accept children younger than six years, whether or not accompanied by a minor parent who is the primary caretaker. The current regulations have requirements for the care of the under six child that are unnecessary when the minor parent is caring for the child. Implementation of the proposed regulations will address this issue by establishing standards appropriate to an under six child cared for by the minor parent.

These regulations are intended to allow and encourage the development of parenting skills through hands-on experience as the primary care providers so

that young parents may develop the skills to ensure their children's healthy growth and development.

COST ESTIMATE

1. Costs or Savings to State Agencies: None
2. Costs to Local Agencies or School Districts: None
3. Nondiscretionary Costs or Savings to Local Agencies: None
4. Federal Funding to State Agencies: None

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

The CDSS has determined that the proposed regulations will affect small businesses.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS has determined that no reasonable alternative considered would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Sections 1530 and 1530.8 of the Welfare

and Institutions Code. Subject regulations implement and make specific Sections 1522.4, 1530.8, and 1596.866 of the Health and Safety Code; Section 11467.1 of the Welfare and Institutions Code; and the Child Welfare League of America Standard of Excellence for Services for Adolescent Pregnancy Prevention, Pregnant Adolescents, and Young Parents.

**CDSS REPRESENTATIVE REGARDING
RULEMAKING PROCESS OF THE
PROPOSED REGULATION**

Contact Person: Anthony J. Velasquez
(916) 657-2586

Backup: Steve Smalley
(916) 657-2586

**CDSS REPRESENTATIVE REGARDING
SUBSTANCE OF THE PROPOSED REGULATION**

Program Contact: Fernando Sandoval
(916) 322-5507

Backup: Connie Fanos
(916) 324-4318

**TITLE 28. DEPARTMENT OF
MANAGED HEALTH CARE**

Section 1010

**NOTICE OF INTENT TO ADOPT REGULATIONS
IMPLEMENTING CONSUMER
PARTICIPATION PROGRAM**

NOTICE IS HEREBY GIVEN

The Director of the Department of Managed Health Care (Director), pursuant to the rulemaking authority granted by sections 1341 and 1344 of the Health and Safety Code, proposes to adopt section 1010, Title 28, California Code of Regulations, pertaining to the award of advocacy fees to consumer groups for making a substantial contribution to departmental decision making.

PUBLIC HEARING

Pursuant to Government Code section 11346.8(a), the Department of Managed Health Care (Department) has scheduled a public regulatory hearing on file #2002-REG-22, Consumer Participation Program regulations.

The public hearing is scheduled to take place on Tuesday, May 20, 2003, at the following location: 980 9th St., Sacramento CA 95814, Second Floor Conference Room A.

The public hearing will begin promptly at 10 a.m. Public comments shall be limited to the subject of the text of the regulation and should be no more than five (5) minutes in length. The hearing may be brief

depending on the number of speakers. The Department reserves the right to respond to comments and questions at a later time in writing.

Should you have questions or comments regarding the public hearing, you may contact Lyn Amor Macaraeg, Legal Analyst, Office of Legal Services, (916) 322-6727.

Individuals who require accommodations pursuant to the Americans with Disabilities Act are requested to contact Lyn Amor Macaraeg at least three days prior to the scheduled meeting date. TDD users may contact the Department at (877) 688-9891.

**WRITTEN COMMENT PERIOD/
CONTACT PERSON**

Notice is also given that any interested person may present statements or arguments relevant to the proposed action by a written communication addressed to, and received by, the Department's contact person identified below on or before 5 pm on **May 19, 2003**. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day. Written communications may also be sent to Lyn Amor Macaraeg via electronic mail at lmacaraeg@dmhc.ca.gov or via facsimile at (916) 324-3968.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

California Health and Safety Code sections 1341 and 1344 vest the Director with the power to administer and enforce the provisions of the Knox-Keene Health Care Service Plan Act of 1975 (Act).

Section 1341 charges the Director with, among other things, the execution of the laws relating to directing the Department to ensure that health care service plans provide enrollees with access to quality health care services and protect and promote the interests of enrollees. Section 1344 vests the Director with the authority to adopt, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter, including rules governing applications and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of the Act.

Senate Bill 1092, approved by the Governor September 22, 2002, adds section 1348.9 of the Health & Safety Code to require that the Director adopt regulations on or before July 1, 2003 to establish the Consumer Participation Program. This program allows for the Director to award reasonable advocacy and witness fees to any person or organization demonstrating that the person or organization represents the interests of consumers and has made a substantial

contribution on behalf of consumers to the adoption of any regulation, or to an order or decision made by the Director.

The Department proposes regulation section 1010 to implement section 1348.9 of the Act by:

- establishing guidelines for awarding advocacy and witness fees, including determining when fees are appropriate
- defining market rates for advocacy fees
- establishing the criteria for when a person or organization represents the interests of consumers and satisfies the statutory prerequisite for making a substantial contribution to departmental decision making and
- setting forth the procedures which will govern requests for eligibility to participate and seek compensation, petitions to participate in proceedings, and applications for an award of advocacy fees.

This regulation is necessary in order to comply with the statutory directive to the Department to promulgate regulations implementing the Consumer Participation Program, allowing for advocacy fees to consumer groups who make a substantial contribution to departmental decision making.

AUTHORITY

California Health & Safety Code sections 1341 and 1344.

REFERENCE

California Health & Safety Code section 1348.9, Government Code section 15376.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department has prepared and has available for public review the following documents:

1. An initial statement of reasons for the new regulations;
2. Text of the legally effective regulations; and,
3. All information upon which this proposal is based (rulemaking file).

A copy of any or all of these items is available upon request by writing to the Department of Managed Health Care, ATTN: Ms. Lyn Amor Macaraeg, 980 9th Street, Suite 500, Sacramento, California 95814, which address will also be the location of public records, including reports, documentation, and other material related to this notice of proposed action. Additionally, a copy of the final statement of reasons (when prepared) will be available upon request by writing to the same address.

INTERNET AVAILABILITY

Materials regarding this notice of proposed action that are available via the Internet may be accessed at the following website:

<http://www.hmohelp.ca.gov/library/regulations/pending>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation. The changes will be clearly indicated. A request for a copy of any modified regulation should be addressed to the contact person designated below. The Director will accept written comments on the modified regulation for 15 days after the date on which they are made available. The Director may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

ALTERNATIVES CONSIDERED

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the above action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the comment period.

FISCAL IMPACT

- Cost or savings to any state agency: up to \$350,000 in costs each fiscal year until January 1, 2007 which will come from assessments on health service plans.
- Cost to any local agency or school district for which Cal. Gov't Code section 17500-17630 requires reimbursement: None.
- Other non-discretionary cost or savings imposed upon local agencies: None.
- Costs or savings in federal funding to the state: None.
- Effect on housing costs: None.

DETERMINATIONS

The Director has determined that:

- The regulation has no economic impact on small businesses. Health care service plans are not a small business under Cal. Gov't Code section 11342.610.

- The regulation does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Cal. Gov't Code section 17500 *et seq.*
- The regulation will not have a significant statewide adverse economic impact directly affecting business, including the ability of California to compete with businesses in other states, according to the Director's initial determination and pursuant to Cal. Gov't Code section 11346.5(a)(8).
- The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- No known reasonable alternative to this proposed regulation exists;
- Per Cal. Gov't Code section 11346.5(a)(10), does not significantly affect:
 - The creation of jobs in California;
 - The elimination of jobs in California;
 - The creation of new businesses in California;
 - The elimination of existing business in California;
 - The expansion of existing businesses in California.

CONTACT PERSON

Comments or inquiries and substantive questions concerning this proposed regulation may be directed to BRIAN J. BARTOW, Assistant Chief Counsel, or to the back up comment person, LYN AMOR MACARAEG, Legal Analyst, Department of Managed Health Care, Office of Legal Services, 980 Ninth Street, Suite 500, Sacramento, California 95814, (916) 322-6727.

TITLE MPP. DEPARTMENT OF SOCIAL SERVICES

NOTICE OF PROPOSED CHANGES IN REGULATIONS

ITEM #1 CalWORKs Senior Parent/Minor Parent Cases—Income Availability Change
ORD #1202-31

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held May 21, 2003, as follows:

May 21, 2003
Office Building #9
744 P St. Auditorium
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on May 21, 2003.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT

Anthony J. Velasquez, Chief
Office of Regulations Development
California Department of Social Services
744 P Street, MS 7-192
Sacramento, California 95814
TELEPHONE: (916) 657-2586
FACSIMILE: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Manual of Policies and Procedures, Division 44 (Standards of Assistance), Chapter 44-300 (Aid Payments), Section 44-315 (Amount of Aid), and Division 89 (Demonstration Projects), Chapter 89-200 (Minor Parent), Section 89-201 (Minor Parent Requirement).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This proposed regulation implements and makes specific changes to the CalWORKs program and the treatment of senior parent's(s) income in senior parent/minor parent cases. The new rule eliminates the special provision wherein a senior parent's(s) income is not available to their minor parent's(s) child(ren). Under the new rule, the senior parent's(s) income will be considered available to meet the needs of the minor parent's child(ren) in accordance with regular CalWORKs budgeting and income rules.

Under the authority provided in Assembly Bill (AB) 444, the California Department of Social Services (CDSS) issued an All County Letter (ACL 02-94), effective October 1, 2002 implementing this new rule. Counties were directed to take the following steps to implement the change:

1. Identify all cases affected by this change,
2. Recalculate the grant amount, and
3. Send notices of action to reduce or discontinue the grants of the affected families.
 - a. The families will have 10 days prior to the effective date of the grant reduction or discontinuance to request a hearing. If the family appeals timely, the grant will continue at the same level pending the hearing decision, unless the family opts not to receive a grant in order to avoid a potential overpayment.

The current senior parent deeming rules were changed as a result of the enactment of AB 908 in 1995, also known as the Teen Pregnancy Disincentive policy. Under that law and policy, effective March 1, 1997, CDSS began to require minor parents, with some exceptions, to live with a parent or adult relative (or in an adult-supervised group setting) as a condition of aid. Under that law, the CalWORKs program allowed an exception to "guarantee" at least a grant for one person (the minor parent's(s) child) if the family's income would otherwise make the case ineligible for aid. This has been known as the senior parent deeming rule.

AB 444 (Ch. 1022, Stats. 2002) requires that treatment of income in senior parent/minor parent cases be consistent with other CalWORKs budgeting and income considerations by eliminating the requirement that a senior parent's(s) income cannot be deemed to the minor parent's(s) child(ren).

COST ESTIMATE

1. Costs or Savings to State Agencies: Savings of approximately \$0 in the current State Fiscal Year.
2. Costs to Local Agencies or School Districts: None.

3. Nondiscretionary Costs or Savings to Local Agencies: Savings of approximately \$159,000 in the current State Fiscal Year.
4. Federal Funding to State Agencies: Savings of approximately \$7,026,000 (TANF) in the current State Fiscal Year.

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate upon local agencies or school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500, et seq. of the Government Code.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Sections 10553 and 10554, Welfare and Institutions Code. Subject regulations implement and make specific Section 11254, Welfare and Institutions Code, as amended by AB 444, Ch. 1022, Stats. 2002.

**CDSS REPRESENTATIVE REGARDING
RULEMAKING PROCESS OF THE
PROPOSED REGULATION**

Contact Person: Anthony J. Velasquez
(916) 657-2586

Backup: Jaimie Porter
(916) 657-2586

**CDSS REPRESENTATIVE REGARDING
SUBSTANCE OF THE PROPOSED REGULATION**

Program Contact: Terry Mallin
(916) 653-8395

Backup: Maria Hernandez
(916) 654-1322

EMERGENCY STATEMENT

These regulations are to be adopted on an emergency basis. In order to allow interested persons an opportunity to submit statements or arguments concerning these regulations, they will be considered at public hearing in accordance with Government Code Section 11346.4.

**TITLE MPP. DEPARTMENT OF
SOCIAL SERVICES**

**NOTICE OF PROPOSED CHANGES
IN REGULATIONS**

**ITEM #2 Food Stamp Reauthorization Act of 2002
ORD #1202-26**

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held May 21, 2003, as follows:

May 21, 2003

Office Building #9
744 P St. Auditorium
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on May 21, 2003.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT

Anthony J. Velasquez, Chief
Office of Regulations Development
California Department of Social Services
744 P Street, MS 7-192
Sacramento, California 95814
TELEPHONE: (916) 657-2586
FACSIMILE: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Manual of Policies and Procedures, Division 63, Chapter 63-400 (Eligibility Requirements), Section 63-405 (Citizenship or Eligible Noncitizen Status)

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

On May 13, 2002, Public Law (P.L.) 107-171, also known as the Farm Security and Rural Investment Act of 2002, was signed into law. This Act contains the Food Stamp Reauthorization Act of 2002 which legislates mandatory changes to the Food Stamp Program. Most of these provisions were implemented on October 1, 2002.

Upon implementation of these regulations, federal eligibility for the Food Stamp Program will be restored for legal non-citizens that have been in the country for five years [P.L. 107-771, Title IV, Section 4401].

COST ESTIMATE

1. Costs or Savings to State Agencies: Savings of approximately \$19,819,000 in the current State Fiscal Year. Additional costs of approximately \$1,883,000 to Food Stamp Administration.
2. Costs to Local Agencies or School Districts: None.
3. Nondiscretionary Costs or Savings to Local Agencies: No fiscal impact exists because this regulation does not affect any local entity or program
4. Federal Funding to State Agencies: Additional expenditures of approximately \$2,691,000 in the current State Fiscal Year.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies, but not school districts. There are "state-mandated local costs" in these regulations, which require federal and state reimbursement due to increased administrative costs under Section 17500 et seq. of the Government Code. However, the conversion of recipients from the California Food Assistance Program to the federal food stamp program will result in a significant savings to the state in providing benefits to this population. The local, state, and federal agencies share administrative costs. Increased costs in benefits are paid entirely by the federal government.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Welfare and Institutions Code Sections 10553, 10554, and 18904. Subject regulations implement and make specific Public Law 107-171, Title IV, Section 4401 and the United States Department of Agriculture, Food and Nutrition Service Administrative Notice 03-04 dated October 21, 2002.

CDSS REPRESENTATIVE REGARDING RULEMAKING PROCESS OF THE PROPOSED REGULATION

Contact Person: Anthony J. Velasquez
(916) 657-2586

Backup: Robin Garvey
(916) 657-2586

CDSS REPRESENTATIVE REGARDING SUBSTANCE OF THE PROPOSED REGULATION

Program Contact: Bill Mullinax
(916) 657-3418

Backup: Mike Papin
(916) 654-1880

EMERGENCY STATEMENT

These regulations are to be adopted on an emergency basis. In order to allow interested persons an opportunity to submit statements or arguments concerning these regulations, they will be considered at public hearing in accordance with Government Code Section 11346.4.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or (CEIR) has been submitted and the prospective contractors are ineligible to enter into the State contracts. The prospective contractors signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contracts in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

C & C Disposal Service
P. O. Box 234
Rocklin, CA 95677

Choi Engineering Corp.
286 Greenhouse
Marketplace, Suite 329
San Leandro, CA 94579

Fries Landscaping
25421 Clough
Escalon, CA 95320

Marinda Moving, Inc.
8010 Betty Lou Drive
Sacramento, CA 95828

MI-LOR Corporation
P. O. Box 60
Leominster, MA 01453

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

San Diego Physicians &
Surgeons Hospital
446 26th Street
San Diego, CA

Southern CA Chemicals
8851 Dice Road
Santa Fe Springs, CA 90670

Tanemura and Antle Co.
1400 Schilling Place
Salinas, CA 93912

Turtle Building Maintenance Co.
8132 Darien Circle
Sacramento, CA 95828

Univ Research Foundation
8422 La Jolla Shore Dr.
La Jolla, CA 92037

Vandergoot Equipment Co.
P. O. Box 925
Middletown, CA 95461

DEPARTMENT OF FISH AND GAME

CESA CONSISTENCY DETERMINATION FOR Day Use Recreational Area at Dowdy Ranch Project Santa Clara County

The Department of Fish and Game ("Department") received notice on March 21, 2003 that the California Department of Parks and Recreation proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act ("CESA"). This project consists of developing a day use area with seasonal public access at the southeastern side of Henry W. Coe State Park. Facilities would include parking, picnic tables, horse facilities, and trails. The activities will impact approximately 4 acres of upland habitat.

The U.S. Fish and Wildlife Service, on March 4, 2003, issued to the U.S. Army Corps of Engineers ("Corps") a no jeopardy Federal Biological Opinion (1-1-02-F-0023) which considers the Federally endangered and State threatened San Joaquin kit fox (*Vulpes macrotis mutica*) and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, the California Department of Parks and Recreation is requesting a determination on whether the Federal Biological Opinion 1-1-02-F-0023 is consistent with CESA.

If the Department determines that the Federal Biological Opinion is consistent with CESA, the California Department of Parks and Recreation will not be required to obtain an incidental take permit under CESA (Fish and Game Code Section 2081(b)) for the proposed project.

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION

Fish and Game Code Section 2080.1
2080-2003-004-06

Project: Midland Materials Yard
Location: Riverside County, California
Applicant: Riverside County Transportation
Department

BACKGROUND

On February 27, 2002 the U.S. Fish and Wildlife Service (Service) issued Biological Opinion FWS-ERIV-1813.3 to the Bureau of Land Management ("BLM") for the Midlands Materials Yard Project, describing the project actions and setting forth measures to mitigate impacts to the desert tortoise (*Gopherus agassizii*) and its habitat. This species is listed under the California Endangered Species Act, Fish and Game Code sections 2050 et seq (CESA). On 14 February 2003, the Director of the Department of Fish and Game (Department) received a notice from Juan C. Perez, on behalf of the Riverside County Transportation Department, requesting a determination pursuant to Fish and Game Code section 2080.1 that the Federal Biological Opinion is consistent with CESA.

The proposed project consists of expansion of an existing sand and gravel extraction site. The proposed project site is located northwest of Blythe, California. The mining expansion will result in the loss of 46 acres of desert tortoise habitat over the next ten years. An additional 78.3 acres of habitat may be modified within the material site over the life of the project.

DETERMINATIONS

The Department has determined that the Federal Biological Opinion FWS-ERIV-1813.3 is consistent with CESA because the project and measures described in that Opinion meet the conditions set forth in Fish and Game Code Section 2081 (b) and (c) for authorization of incidental take of species protected under CESA. The Biological Opinion's measures to mitigate project impacts to the desert tortoise include: 1) compensation for the loss of 46 acres of desert tortoise habitat at a compensation ratio of 1:1. The compensation is in the form of funds provided at the rate of \$575/acre to the BLM for acquisition of desert tortoise habitat. In addition, a management endowment and enhancement fee for the compensation lands at \$295/acre for a total of \$13,970, would be provided to the Department; 2) the compensation and management fees for future loss of habitat, up to 78.3 acres at a minimum of a 1:1 ratio, to be evaluated at the time of the future disturbance; 3) the on-site biological

supervision/monitoring conducted by a qualified biologist to minimize harm/harassment of desert tortoises during all project-related activities; and 4) the handling of tortoises only via procedures established in the *Guidelines for Handling Desert Tortoises During Construction Projects* (Desert Tortoise Council 1994, revised 1999)

Pursuant to Section 2080.1 of the Fish and Game Code, with this determination, Riverside County Transportation Department will not need to obtain authorization pursuant to CESA for take of the desert tortoise in carrying out the project, provided the project remains as it is described in the Biological Opinion. A new Consistency Determination or a CESA incidental take authorization must be obtained from the Department if the project as described in the Biological Opinion, including mitigation or conservation requirements set forth in the Biological Opinion, is changed after issuance of that Opinion by the Service. Although not conditions of the Biological Opinion, the Department requests that copies of the annual report identified in measure 1.10 of the Terms and Conditions of the biological opinion be submitted to the Department's Eastern Sierra-Inland Deserts Regional Office.

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION

Fish and Game Code Section 2080.1
CESA No. 2080-2003-005-03

PROJECT: Shell Pipeline Company, Marsh Creek
Pipeline Replacement Project

LOCATION: Contra Costa County, Marsh Creek
Area

NOTIFIER: Shell Pipeline Company

BACKGROUND

On January 30, 2003, the U.S. Fish and Wildlife Service ("Service") issued to the U.S. Army Corps of Engineers ("Corps"), Biological Opinion No. 1-1-01-F-0299 ("Biological Opinion") for the Shell Pipeline Company ("Shell") Marsh Creek Pipeline Replacement Project, describing the project actions and setting forth measures to mitigate impacts to the San Joaquin kit fox ("kit fox," *Vulpes macrotis mutica*) and Alameda whipsnake ("whipsnake," *Masticophis lateralis euryxanthus*), and their habitat. Both species are listed under the California Endangered Species Act,

Fish and Game Code sections 2050 et seq. ("CESA"). On February 14, 2003, the Director of the Department of Fish and Game (Department) received a notice from Shell pursuant to section 2080.1 of the Fish and Game Code requesting a determination that the federal Biological Opinion is consistent with CESA.

Shell's Pipeline Project is located approximately 6 miles southeast of the town of Clayton in eastern Contra Costa County, California and will be offset from an existing line approximately 10 feet with a pipeline reroute of 0.75 miles south of Marsh Creek Road. The pipeline traverses publicly and privately owned lands used primarily for grazing in a southwest to northeast direction. The southeastern end of the pipeline begins at a tie-in point at Round Valley on East Bay Regional Parks District ("EBRPD") Property. The pipeline continues to the north toward Marsh Creek Road for 3.4 miles through Hog Canyon, an area consisting of private property. The pipeline continues north of Marsh Creek Road for approximately 2.2 miles on private property. The right of way is 65 feet wide except in areas with high ground squirrel burrow concentrations, where it will be 50 feet wide, on steep hillsides, where it will be 100 feet wide, and at wetlands, where it will be 20 to 45 feet wide. The proposed project will disturb 55 acres of habitat for the kit fox and whipsnake. Shell will mitigate this loss by protecting habitat at a ratio of approximately 1:1 at the Rummell Property.

DETERMINATION

Based on the terms and conditions in the federal Biological Opinion No. 1-1-01-F-0299, the Department has determined that the Biological Opinion is consistent with CESA because the project and mitigation measures meet the conditions set forth in Fish and Game Code section 2080, subdivisions (b) and (c) for authorization of incidental take of species protected under CESA. Important to the Department's findings are several measures from the Biological Opinion, which minimize or mitigate expected or potential impacts to the whipsnake and kit fox. These include, but are not limited to, the following:

1. Shell will mitigate for disturbing 55.00 acres of potential whipsnake and kit fox habitat caused by the pipeline project by providing replacement habitat at a 1:1 ratio through the purchase and transfer to EBRPD of the 62 acre Rummell Property located in Contra Costa County. The Rummell Property is located between 2 other EBRPD Reserves—Black Diamond Mines Regional Preserve and Clayton Ranch. Shell will ensure that a Service-approved habitat management plan will be prepared for the conservation area, and that an easement for the conservation area will be deeded to a public agency or non-profit entity

authorized to hold conservation easements under California Civil Code section 815 et seq. When Shell records the conservation easement in Contra Costa County, Shell will provide an endowment sufficient to implement all conservation measures set out in the management plan and perform routine maintenance activities in perpetuity. The endowment will be held in a non-wasting account, with some of the interest generated annually applied to the principal to offset inflation. Although a conservation easement is an acceptable form of mitigation, the determination that this Biological Opinion is consistent with CESA does not constitute Department approval or disapproval of this particular easement.

2. Shell will conduct a preconstruction survey of the pipeline right of way for the whipsnake and kit fox.
3. Shell will install exclusion fencing to prevent impacts to the kit fox or potential kit fox burrows.
4. Shell will limit creating open trenches without pipe to 2,000 feet or less in areas with high and moderate to high potential for whipsnakes, and open trench with pipe to 500 feet or less where feasible. If a whipsnake is present in the open trench, the biological monitor may further restrict the amount of trench remaining open to minimize the potential of take of the whipsnake.
5. Shell will maintain an on-site biological compliance monitor. If a whipsnake is encountered during construction, activities will cease until the monitor has determined that the whipsnake will not be harmed. An approved biologist will move any entrapped whipsnake to the nearest available habitat.
6. Shell shall install a four foot high exclusion fence on the north side of the right of way between stations 282+50 through 295+00 by April 1 or as soon as weather and right of way conditions allow. A biologist authorized to capture and relocate whipsnake shall monitor clearing, grubbing, and fence installation.

Pursuant to section 2080.1 of the Fish and Game Code, incidental take authorization under CESA will not be required for incidental take of the kit fox or whipsnake. Any substantive changes to the project as described in the biological opinion, including changes to the mitigation measures, will require the notifier to obtain a new Consistency Determination or a CESA incidental take permit from the Department.

The Department requests that copies of the annual or periodic monitoring reports, or other circulated materials relevant to the project's effects on San Joaquin kit fox and Alameda whipsnake, be submitted to the Department's Central Coast Regional Office.

DEPARTMENT OF HEALTH SERVICES

Notice is hereby given that the Drug Use Review (DUR) Board will conduct a public meeting in the 18th Floor meeting room, 714 P Street, Sacramento, CA beginning at 10 a.m. on Monday May 12, 2003.

AGENDA

1. DUR Drug Information/Alert Incidence Updates
2. DUR Program Enhancements—High Dose expansion
3. DUR Annual Report discussion
4. DUR Projects Overview and Update
5. Development of Target Drug List by Therapeutic Category
6. Operational Issues

Speaker Request Forms will be available at the meeting or may be obtained by contacting Electronic Data Systems Corporation, 3215 Prospect Park Drive, Rancho Cordova, CA 95670. Attention: DUR Pharmacist Jude Simon-Leack, Pharm.D., and MSW.

DEPARTMENT OF TRANSPORTATION

NOTICE OF PUBLIC MEETING TO CONSIDER REVISING THE DEPARTMENT'S COMPENSATION RATE FOR TELECOMMUNICATIONS FACILITIES PLACED IN CONTROLLED-ACCESS HIGHWAY RIGHT-OF-WAY

By notice dated March 3, 2003, and mailed to all entities holding Certificates of Public Convenience and Necessity issued by the California Public Utilities Commission to provide telecommunication service, the Department announced that the Airspace Advisory Committee of the California Transportation Commission, would meet April 10, 2003, to consider revising the statewide compensation schedule for the installation and maintenance of telecommunications facilities, such as fiber optic cables, in controlled-access highway rights of way.

To insure payments are required on a “. . . competitively neutral and nondiscriminatory basis. . .” as required by federal law, it is envisioned a statewide schedule will be developed which will apply equally to all carriers, rather than having independent contracts for each segment. However, rates may differ by geographic area.

PLEASE BE ADVISED that the date, time and place of the hearing will be as follows:

DATE: April 10, 2003

TIME: 10:30 a.m.

PLACE: “Skyroom,” Burbank Airport,
Burbank, CA

Interested parties that would like to provide relevant information, discuss this issue, and/or get more detailed instructions on directions to the meeting, should contact Peter Schultze, Right of Way Wireline Program Lead (916-654-2346; 1120 N Street, MS 37, Sacramento, CA 95814).

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

CALIFORNIA REGULATORY REGISTER NOTICE ACTION DESCRIPTION FOR A CONSOLIDATION AND PCB WASTE OPERATIONS VARIANCE ISSUED BY THE STATEWIDE COMPLIANCE DIVISION, TRANSPORTATION SECTION, FOR SAN DIEGO GAS & ELECTRIC

On March 18, 2003, the Department of Toxic Substances Control (DTSC), granted a regulatory exemption variance to San Diego Gas & Electric, a registered transporter of hazardous waste, to conduct consolidation and polychlorinated biphenyl (PCB) waste operations authorized under the California Code of Regulations, title 22, sections 66263.45 and 66263.44. The variance permits the grantee to transport PCB waste to a designated central collection facility. In lieu of a manifest, the transporter shall use a shipping paper which contains all the information required pursuant to the Code of Federal Regulations, title 49, part 172, subpart C. The hazardous waste must then be manifested to an authorized facility.

CEQA Exemption. The project qualifies for a CEQA exemption under Public Resources Code Section 21080(b)(1), Ministerial Projects. This variance is issued pursuant to Chapter 13, Article 4, Section 66263.40 et seq. (Regulatory Exemptions for Certain Transportation Operations), that allows for five specific types of transportation requirement exemptions. Applicants must meet preset regulatory standards. In applying these standards, DTSC only verifies specific facts regarding eligibility and may not add case-specific conditions.

The variance expires on April 30, 2004. For more information please call Maria Salomon of DTSC's Transportation Section at (916) 255-3624.

FISH AND GAME COMMISSION

NOTICE OF PROPOSED CHANGES IN REGULATIONS

(Continuation of California Notice Register 2003, No. 7-Z, and Meeting of February 7, 2003)

(Note: The Commission is exercising its powers under Section 202 of the Fish and Game Code as the following changes to the proposed regulations

may not be available to the public for the full public comment period prior to the adoption. See the Updated Informative Digest.)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission, pursuant to the authority vested by sections 200, 202, 205, 220, 240, 2084 and 7891 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205 and 2084 of said Code, proposes to amend Section 27.80, Title 14, California Code of Regulations to conform ocean sportfishing regulations for salmon within state waters to those agreed upon by the Pacific Fishery Management Council (PFMC).

UPDATED INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Annually, the PFMC develops ocean salmon fishing regulations that must meet specific allocation and spawning escapement goals for the stocks managed under the Salmon Fishery Management Plan.

The Initial Statement of Reasons reflected the range of possible management measures that will be considered for 2003. At the PFMC's March 10-14, 2003 meeting, three options were developed that will consider specific changes from current regulations. The following changes are due to high ocean abundance forecasts of Oregon Coastal Natural (OCN) coho, an endangered species, and Klamath River fall chinook.

Under all three options, the season length south of Point Arena is the same as current regulations, and the season length is extended 12 days between Horse Mountain and Point Arena by opening all of July.

The options are as follows:

Option 1

This option provides an increase of 26 fishing days in the Klamath Management Zone (KMZ) sport fishery compared to current regulations. There is a no weekly catch limit in KMZ for the entire season.

Option 2

This option provides an increase of 16 fishing days in the Klamath Management Zone (KMZ) sport fishery compared to current regulations. There is a no weekly catch limit in KMZ for the entire season.

Option 3

This option provides an increase of 6 fishing days in the Klamath Management Zone (KMZ) sport fishery compared to current regulations.

The final regulation recommendations will be made by the PFMC on April 11, 2003. Upon approval of the PFMC's management recommendations by the Secretary of Commerce, the State must move in a timely manner to conform its ocean sport fishing regulations for salmon in State waters (0 to 3 miles offshore) to

those agreed upon by the PFMC. The federal regulations are expected to be implemented effective May 1, 2003.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Board of Supervisors Chambers, Administration Building, 2800 W. Burrell, Visalia, CA, on Friday, April 4, 2003, at 8:30 a.m., or as soon thereafter as the matter may be heard. Written comments may be submitted at the address given below, or by fax at (916) 653-5040, or by e-mail to fgc@dfg.ca.gov, but must be received no later than April 4, 2003 at the hearing in Visalia, CA. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in strikeout-underline format, as well as an Initial Statement of Reasons, including environmental considerations and all information upon which the proposal is based are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Sherrie Koell at the preceding address or phone number. Patty Wolf, Marine Region, Department of Fish and Game, phone (562) 342-7108, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons and the regulatory language may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.dfg.ca.gov/fg_comm.

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

IMPACT OF REGULATORY ACTION

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Regulations close to status quo are expected to be adopted.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

- (h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in

carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

DECISION NOT TO PROCEED

STATE BOARD OF EDUCATION

NOTICE OF DECISION NOT TO PROCEED

Pursuant to Government Code section 11347, the California State Board of Education (State Board) has decided not to proceed with Title 5, Division 1, Chapter 2, Subchapter 3, Sections 600–612, Chapter 4, Subchapter 3, Administration of Medication to Pupils at School, (Notice File No. Z02-1121-02, published December 6, 2002, in the California Regulatory Notice Register 2002, No. 49-Z, page 2285), based on comments received and therefore, withdraws this proposed action for further consideration.

The State Board will initiate at a later date, with notice as required by law, a new proposal to adopt regulations pertaining to the same or similar subject matter. The California Department of Education will also publish this Notice of Decision Not to Proceed on the Department's website at www.cde.ca.gov/regulations.

RULEMAKING PETITION DECISIONS

BOARD OF PRISON TERMS

NOTICE OF DECISION ON PETITION TO AMEND REGULATIONS

PETITIONER

Kurt Washington (petitioner) submitted a petition which was received by the Board of Prison Terms (Board) on February 13, 2003.

AUTHORITY

Under authority established in Penal Code (PC) Sections (§) 3041, 3052 and 5076.2, the Board may prescribe and amend regulations for the administration of parole.

CONTACT PERSON

Please direct any inquiries regarding this action to Lori Manieri, Regulations Coordinator, Board of Prison Terms, by mail at 1515 "K" Street,

Sixth Floor, Sacramento, CA 95814, by telephone at (916) 445-5277, by telefax at (916) 322-3475, or by E-mail to: "regcomment@bpt.ca.gov".

AVAILABILITY OF PETITION

The petition for amendment of the regulation is available upon request directed to the Board's contact person.

SUMMARY OF PETITION

The petition requests that the Board amend the California Code of Regulations (CCR), Title 15, §§ 2280, 2281(a), 2281(b), 2401, 2402(a) and 2402(b) to include consideration of the amount of time served, the base terms in §§ 2282, 2403(b) and 2403(c), and the post-conviction vested credits in §§ 2282, 2290, 2292, and 2410, when determining whether a life prisoner is suitable for release on parole. First, the petition alleges that California's parole scheme creates a liberty interest in parole release. Second, the petition claims that the Board's failure to consider post-conviction credits at the time that suitability is determined "operates to forfeit a prisoner's vested post-conviction credits," and that this change is necessary to harmonize with PC § 3041. Third, the petition alleges that application of those regulations to prisoners sentenced for committing crimes prior to November 8, 1978, violates the Ex Post Facto Clause of the Constitution (ex post facto).¹

The petitioner also requests relief beyond the scope of the petition process, i.e., alleging that, pursuant to proposed SB 1497(e), the Board "is presently operating under an unconstitutional 'no parole policy.'" The petitioner also requests that the Board conduct an investigation into his own personal case based upon the detriment caused by the alleged ex post facto violation.

BOARD DECISION

The Board denies the petition to amend 15 CCR §§ 2280, 2281(a), 2281(b), 2401, 2402(a) and 2402(b), to include consideration of the amount of time served and the post-conviction credits a prisoner has vested when determining whether a life prisoner is suitable for release on parole.²

¹ U.S. Const. Art. 1, § 10, cl. 1, Cal. Const. Art. 1, § 9.

² While Mr. Washington's petition was dated on February 10, 2003, it was not received by the Board until February 13, 2003. The Board tenders this "Decision on Petition to Amend Regulations" in accord with GC § 11340.7—"within 30 days [of receipt]." The 30th day after receipt falls on March 15th, a Saturday; the response must be filed by the next business day—March 17, 2003. See Government Code (GC) §§ 6706–6707.

Since the only remedy that petitioner can obtain under GC 11340.6 is a regulatory change or a hearing to consider a regulatory change, the Board hereby denies all other relief requested by petitioner. We note that SB 1497 has not passed; the bill does not label the Board's parole policy as either "a no parole policy" or unconstitutional. While the Board declines to conduct an investigation of the petitioner's personal case, we further note that 15 CCR § 2050 et seq. permits any person to file an administrative appeal with the Board.

THE BOARD DENIES YOUR PETITION FOR THE FOLLOWING REASONS

Government Code (GC) § 11340.6 requires that a petition states the following clearly and concisely: (a) the substance or nature of the regulation amendment, or repeal requested; (b) the reason for the request; and (c) a reference to the authority of the state agency to take the action requested.

The petition's request is vague. The petition's burden under the petition process is to specify the substance and nature of the adoption, amendment or repeal of regulations that are desired. The petition has failed to carry this burden. The petition in part seeks that the Board amend 15 CCR §§ 2280 and 2281(b) without stating what changes are desired as to those sections.

The petition requests that the certain of the general considerations provided in § 2041 be repeated in or moved to § 2402(b), on the basis that the Board's implementation of the latter somehow neglects consideration of the former. Section 2041 is entitled "General," the general considerations stated in that section apply to all the areas covered in Div. 2, Chapter 3, Article 11—Parole Consideration Criteria and Guidelines for Murders Committed on or After November 8, 1978, and Attempted Murders Committed on or after January 1, 1987—§§ 2400–2411. To accomplish the change requested by the petition would require either repeating the language from § 2041 to § 2402 or deleting § 2041 and repeating the language in most of the other sections in the Article. To duplicate the language only in § 2042 might lead the public to erroneously believe that the general considerations in § 2041 did not apply to the other sections which failed to contain the duplicated language. The Board rejects this proposal given that it would violate the clarity and/or non-duplication standards set forth in GC §§ 11349.1(a)(3) and (a)(6), respectively.

The petition requests that the Board amend §§ 2281(a) and 2402(a) by deleting from each the phrase "regardless of the length of time served." The petition requests that the Board amend these sections by adding language requiring the hearing panel to consider the amount of time served and the post-

conviction credits vested through the time of the hearing. This could pose significant change in the Board's operations. Thus, let us consider whether the reasons provided by the petition are substantiated as requiring this change.

First, the petition alleges that California's parole scheme, including §§ 2282, 2290, 2292 and 2410, create a liberty interest in parole release.³ Second, the petition alleges that the Board must change its parole criteria to recognize the prisoners' vested post-conviction credits and the suggested presumptive base terms applicable to those prisoners' crimes. The Ninth Circuit Court of Appeals in *McQuillion v. Duncan*⁴ held that the Board violated the prisoner's liberty interest when it rescinded a previously granted parole date without following its own rules. The remedy for liberty interest violations is typically one of due process, i.e. ordering a new hearing to determine the parole date based upon appropriate criteria.

In *McQuillion*, the court affirmed that only "some evidence" supporting the recission panel's findings was necessary to uphold the panel's determination of prisoner unsuitability.⁵ Section 2451 lists four bases for a "good cause" finding that a parole date may be rescinded. In *McQuillion*, the court found that the recission panel did not meet the "some evidence" standard for any of the four bases upon which they rescinded the parole date. Thus, the Ninth Circuit Court of Appeals remanded the case to the district court for grant of the prisoner's habeas corpus writ. The court found no fault with the Board rules, but merely found that the Board must follow its own rules limiting the bases of parole date rescissions to specified criteria, i.e. § 2451.

Given the finding that the prisoner has a liberty interest in parole, the *McQuillion* court concluded that a presumption was raised that the prisoner would be found suitable at some point absent a panel finding that the exceptions stated in the scheme are met, i.e. the gravity of current offenses, or the timing and gravity of any convicted offense, is such that a more lengthy period of incarceration is necessary for public safety before a parole date can be set.⁶ Therefore, due process only requires that the panel find these circumstances exist before declining to grant a parole date.⁷

³ *McQuillion v. Duncan* (9th Cir. 2002) 306 F.3d 895.

⁴ Same Citation.

⁵ *McQuillion*, at 904, citing *Superintendent v. Hill* (1985) 472 U.S. 445.

⁶ *McQuillion*, at 901, citing PC § 3041(b). In contrast, *Morrall*, at 310, 401 states that the prisoner may be released in the future.

⁷ In Mr. McQuillion's case, the hearing record was sufficient for the court to order reinstatement of the previously granted parole date without the need for a further Board hearing.

The petition's argument, based upon *McQuillion*⁸, posits that the Board's current scheme—not requiring the grant post-conviction credits or the setting of a parole date based upon the suggested base terms matrices—violates due process and ex post facto. However, the *McQuillion* court did not state this was required; in fact, the court found no fault with the Board's rules on parole suitability.⁹ While *McQuillion* interprets the California parole scheme as providing a presumption of parole¹⁰, that court also recognizes the validity of Board regulations, i.e. providing suitability criteria and grounds for rescinding a parole date.¹¹

Despite the rebuttable presumption of parole, *In re Morral* held that a prisoner "has no inherent or constitutional right to release before expiration of a valid [life] sentence."¹² In each case the decision weighing the facts of the crime and the individual strives to be equitable not scientific.¹³ "It is thus not surprising that there is no prescribed or defined combination of facts which, if shown, would mandate release on parole."¹⁴ The Board's base term matrices [e.g. § 2282(b)] have received judicial review.¹⁵ "With respect to these determinations [parole suitability], the regulations [15 CCR §§ 2400–2407] provide general guidelines only [15 CCR §§ 2401, 2402(a) and (b)]. The determination is to be made on consideration of each case on an individual basis."¹⁶

Even if a liberty interest attaches to parole suitability criteria, it would make no difference to argue as the petition does that 15 CCR § 2401 should incorporate the criteria present in 2282(b). *In re Seabock* analyzed the Board's suitability criteria and

⁸ *McQuillion* generally, 306 F.3d 895.

⁹ *McQuillion*, at 903, noting Mr. McQuillion's protected interest in freedom in accordance with the substantive criteria established by the Board.

¹⁰ *Morral*, at 291–293, 401–402, interprets PC § 3041(b) as entitling the inmate to have a parole date set unless the Board determines that public safety requires a lengthier period.

¹¹ *McQuillion*, at 903.

¹² *In re Morral* (2002) 102 Cal.App.4th 280, 287, 125 Cal.Rptr.2d 391, 398 citing *Greenholtz v. Inmates of Nebraska* (1979) 99 S.Ct. 2100, 60 L.Ed.2d 668, 675. *McQuillion*, at 901, also citing *Greenholtz* for the same proposition. *McQuillion* did not overrule *Morral*.

¹³ *Morral*, at 301, 410.

¹⁴ *Morral*, at 294, 403–404. See *In re Schoengarth* (Cal. 1967) 425 P.2d 200, in accord.

¹⁵ *In re Seabock* (1983) 140 Cal.App.3d 29, 40, 189 Cal.Rptr. 310, 322, held that the application of current parole suitability guidelines to prisoners convicted of crimes committed prior to July 1, 1977, is not a violation of the ex post facto clause since the rules, consideration of all relevant evidence, have not changed. Although the courts have not expressly analyzed §§ 2402(a) and 2402(b) in this manner, since those sections perform the same function as § 2282(b), the result should be the same.

¹⁶ *Morral*, at p. 289, 400.

held that there was no change to the suitability criteria among any of the relevant periods.¹⁷ The Board has discretion under either the Indeterminate Sentencing Law (ISL)¹⁸, or the Determinate Sentencing Law (DSL)¹⁹, to delay a finding of parole suitability for prisoners who present significant risks to public safety.

Third, the petition argues that the matrices are ex post facto unless the pre-prison credits are granted offsetting the base term. The petition alleges that ex post facto prevents the Board from applying suitability regulations adopted in November 8, 1978, to prisoners whose commitment offense was committed previously. Generally, ex post facto prohibits government rules that constitute additional punishment on their face and are applied retroactively. To the extent that Board regulations on parole suitability were adopted after some crimes, they could potentially violate ex post facto. Sections 2280, 2281(a), and 2281(b) were adopted on July 31, 1978; §§ 2401, 2402(a), and were adopted on September 8, 1981. However, Board rules on parole suitability have been held not to constitute additional punishment and thus not to have violated ex post facto.²⁰ The *Seabock* court spelled this out quite clearly in the following excerpt:

*It cannot be said that [the prisoner] . . . could be disadvantaged by application of the DSL [Determinate Sentencing Law] guidelines to him; these newer regulations do not in any way decrease his parole eligibility or chance therefor. Retrospective application of DSL regulations to him does not violate the ex post facto clause of either the United States or the California Constitution. What these newer—ex post—rules do is spell out what was always the fact and the law: the parole-setting agency is empowered to deny parole only after due consideration of all relevant factors including but not limited to the gravity and circumstance of the crimes involved.*²¹

Thus, ex post facto does not actually apply and could not invalidate the Board criteria on parole suitability set forth in 15 CCR §§ 2280, 2281(a), 2281(b), 2401, 2402(a) and 2402(b).

For all these reasons, the Board denies the petition.

¹⁷ *Seabock*, same citation.

¹⁸ PC § 3046.

¹⁹ PC § 5076.2.

²⁰ *Seabock*, at 40-41, 322. Although a prior case held that the Board's base term matrix violated ex post facto when applied to crimes preceding the revised matrix, *Seabock* noted that the Board's parole determination is comprised of two sequential phases, suitability and then term determination. *Seabock* distinguished *In re Stanworth* (1982) 33 Cal.3d 176, 187 Cal.Rptr. 783, an earlier case, as invalidating retroactive application of the base term matrix and not affecting the parole suitability determination.

²¹ *Seabock* at p. 40, 317.

BOARD OF PRISON TERMS

NOTICE OF DECISION ON PETITION TO AMEND REGULATIONS

PETITIONER

Mr. Stanley Johnson's petition was received by the Board of Prison Terms (Board) on February 13, 2003.

AUTHORITY

Under authority established in Penal Code (PC) Sections (§§) 3041, 3052 and 5076.2, the Board may prescribe and amend regulations for the administration of parole.

CONTACT PERSON

Please direct any inquiries regarding this action to Lori Manieri, Regulations Coordinator, Board of Prison Terms, by mail at 1515 "K" Street, Sixth Floor, Sacramento, CA 95814, by telephone at (916) 445-5277, by telefax at (916) 322-3475, or by E-mail to: "regcomment@bpt.ca.gov".

AVAILABILITY OF PETITION

The petition for amendment of the regulations is available upon request directed to the Board's contact person.

SUMMARY OF PETITION

The petition requests that the Board amend the California Code of Regulations (CCR), Title 15, §§ 2280, 2281(a), 2281(b), 2401, 2402(a) and 2402(b) to include consideration of the amount of time served, the base terms in §§ 2282, 2403(b) and 2403(c), and the post-conviction vested credits in §§ 2282, 2290, 2292, and 2410, when determining whether a life prisoner is suitable for release on parole. First, the petition alleges that California's parole scheme creates a liberty interest in parole release. Second, the petition claims that the Board's failure to consider post-conviction credits at the time that suitability is determined "operates to forfeit a prisoner's vested post-conviction credits," and that this change is necessary to harmonize with PC § 3041. Third, the petition alleges that application of those regulations to prisoners sentenced for committing crimes prior to November 8, 1978, violates the Ex Post Facto Clause of the Constitution (ex post facto)¹.

BOARD DECISION

The Board of Prison Terms denies the petition to amend 15 CCR §§ 2280, 2281(a), 2281(b), 2401, 2402(a) and 2402(b), so that they include consideration of the amount of time served and the post-

¹ U.S. Const. Art. I, § 10, cl. 1, Cal. Const. Art. I, § 9.

conviction credits a prisoner has vested when determining whether a life prisoner is suitable for release on parole.²

THE BOARD DENIES YOUR PETITION FOR THE FOLLOWING REASONS

Government Code (GC) § 11340.6 requires that a petition states the following clearly and concisely: (a) the substance or nature of the regulation amendment, or repeal requested; (b) the reason for the request; and (c) a reference to the authority of the state agency to take the action requested.

The petition's request is vague. The petition's burden under the petition process is to specify the substance and nature of the adoption, amendment or repeal of regulations that are desired. The petition has failed to carry this burden. The petition in part seeks that the Board amend 15 CCR §§ 2280 and 2281(b) without stating what changes are desired as to those sections.

The petition requests that the certain of the general considerations provided in § 2041 be repeated in or moved to § 2402(b), on the basis that the Board's implementation of the latter somehow neglects consideration of the former. Section 2041 is entitled "General," the general considerations stated in that section apply to all the areas covered in Div. 2, Chapter 3, Article 11—Parole Consideration Criteria and Guidelines for Murders Committed on or After November 8, 1978, and Attempted Murders Committed on or after January 1, 1987—§§ 2400–2411. To accomplish the change requested by the petition would require either repeating the language from § 2041 to § 2402 or deleting § 2041 and repeating the language in most of the other sections in the Article. To duplicate the language only in § 2042 might lead the public to erroneously believe that the general considerations in § 2041 did not apply to the other sections which failed to contain the duplicated language. The Board rejects this proposal given that it would violate the clarity and/or non-duplication standards set forth in GC §§ 11349.1(a)(3) and (a)(6), respectively.

The petition requests that the Board amend §§ 2281(a) and 2402(a) by deleting from each the phrase "regardless of the length of time served." The petition requests that the Board amend these sections by adding language requiring the hearing panel to consider the amount of time served and the post-

conviction credits vested through the time of the hearing. This could pose significant change in the Board's operations. Thus, let us consider whether the reasons provided by the petition are substantiated as requiring this change.

First, the petition alleges that California's parole scheme, including §§ 2282, 2290, 2292 and 2410, create a liberty interest in parole release.³ Second, the petition alleges that the Board must change its parole criteria to recognize the prisoners' vested post-conviction credits and the suggested presumptive base terms applicable to those prisoners' crimes. The Ninth Circuit Court of Appeals in *McQuillion v. Duncan*⁴ held that the Board violated the prisoner's liberty interest when it rescinded a previously granted parole date without following its own rules. The remedy for liberty interest violations is typically one of due process, i.e. ordering a new hearing to determine the parole date based upon appropriate criteria.

In *McQuillion*, the court affirmed that only "some evidence" supporting the rescission panel's findings was necessary to uphold the panel's determination of prisoner unsuitability.⁵ Section 2451 lists four bases for a "good cause" finding that a parole date may be rescinded. In *McQuillion*, the court found that the rescission panel did not meet the "some evidence" standard for any of the four bases upon which they rescinded the parole date. Thus, the Ninth Circuit Court of Appeals remanded the case to the district court for grant of the prisoner's habeas corpus writ. The court found no fault with the Board rules, but merely found that the Board must follow its own rules limiting the bases of parole date rescissions to specified criteria, i.e. § 2451.

Given the finding that the prisoner has a liberty interest in parole, the *McQuillion* court concluded that a presumption was raised that the prisoner would be found suitable at some point absent a panel finding that the exceptions stated in the scheme are met, i.e. the gravity of current offenses, or the timing and gravity of any convicted offense, is such that a more lengthy period of incarceration is necessary for public safety before a parole date can be set.⁶ Therefore, due process only requires that the panel find these circumstances exist before declining to grant a parole date.⁷

³ *McQuillion v. Duncan* (9th Cir. 2002) 306 F.3d 895.

⁴ Same citation.

⁵ *McQuillion*, at 904, citing *Superintendent v. Hill* (1985) 472 U.S. 445.

⁶ *McQuillion*, at 901, citing PC § 3041(b). In contrast, *Morrall*, at 310, 401 states that the prisoner may be released in the future.

⁷ In Mr. McQuillion's case, the hearing record was sufficient for the court to order reinstatement of the previously granted parole date without the need for a further Board hearing.

² While Mr. Johnson's petition was dated on February 7, 2003, it was not received by the Board until February 13, 2003. The Board tenders this "Decision on Petitions to Amend Regulations" in accord with GC § 11340.7—"within 30 days [of receipt]." The 30th day after receipt falls on a March 15th, a Saturday, the response must be filed by the next business day—March 17, 2003. See Government Code (GC) §§ 6706–6707.

The petition's argument, based upon *McQuillion*⁸, posits that the Board's current scheme—not requiring the grant post-conviction credits or the setting of a parole date based upon the suggested base terms matrices—violates due process and ex post facto. However, the *McQuillion* court did not state this was required; in fact, the court found no fault with the Board's rules on parole suitability.⁹ While *McQuillion* interprets the California parole scheme as providing a presumption of parole¹⁰, that court also recognizes the validity of Board regulations, i.e. providing suitability criteria and grounds for rescinding a parole date.¹¹

Despite the rebuttable *presumption* of parole, *In re Morrall* held that a prisoner “has no inherent or constitutional right to release before expiration of a valid [life] sentence.”¹² In each case the decision weighing the facts of the crime and the individual strives to be equitable not scientific.¹³ “It is thus not surprising that there is no prescribed or defined combination of facts which, if shown, would mandate release on parole.”¹⁴ The Board's base term matrices [e.g. § 2282(b)] have received judicial review.¹⁵ “With respect to these determinations [parole suitability], the regulations [15 CCR §§ 2400–2407] provide general guidelines only [15 CCR §§ 2401, 2402(a) and (b)]. The determination is to be made on consideration of each case on an individual basis.”¹⁶

Even if a liberty interest attaches to parole suitability criteria, it would make no difference to argue as the petition does that 15 CCR § 2401 should incorporate the criteria present in 2282(b). *In re*

Seabock analyzed the Board's suitability criteria and held that there was no change to the suitability criteria among any of the relevant periods.¹⁷ The Board has discretion under either the Indeterminate Sentencing Law (ISL)¹⁸, or the Determinate Sentencing Law (DSL)¹⁹, to delay a finding of parole suitability for prisoners who present significant risks to public safety.

Third, the petition argues that the matrices are ex post facto unless the pre-prison credits are granted offsetting the base term. The petition alleges that ex post facto prevents the Board from applying suitability regulations adopted in November 8, 1978, to prisoners whose commitment offense was committed previously. Generally, ex post facto prohibits government rules that constitute additional punishment on their face and are applied retroactively. To the extent that Board regulations on parole suitability were adopted after some crimes, they could potentially violate ex post facto. Sections 2280, 2281(a), and 2281(b) were adopted on July 31, 1978; §§ 2401, 2402(a), and were adopted on September 8, 1981. However, Board rules on parole suitability have been held not to constitute additional punishment and thus not to have violated ex post facto.²⁰ The *Seabock* court spelled this out quite clearly in the following excerpt:

*It cannot be said that [the prisoner] . . . could be disadvantaged by application of the DSL [Determinate Sentencing Law] guidelines to him; these newer regulations do not in any way decrease his parole eligibility or chance therefor. Retrospective application of DSL regulations to him does not violate the ex post facto clause of either the United States or the California Constitution. What these newer—ex post—rules do is spell out what was always the fact and the law: the parole-setting agency is empowered to deny parole only after due consideration of all relevant factors including but not limited to the gravity and circumstance of the crimes involved.*²¹

Thus, ex post facto does not actually apply and could not invalidate the Board criteria on parole

⁸ *McQuillion* generally, 306 F.3d 895.

⁹ *McQuillion*, at 903, noting Mr. McQuillion's protected interest in freedom in accordance with the substantive criteria established by the Board.

¹⁰ *Morrall*, at 291–293, 401–402, interprets PC § 3041(b) as entitling the inmate to have a parole date set unless the Board determines that public safety requires a lengthier period.

¹¹ *McQuillion*, at 903.

¹² *In re Morrall* (2002) 102 Cal.App.4th 280, 287, 125 Cal.Rptr.2d 391, 398 citing *Greenholtz v. Inmates of Nebraska* (1979) 99 S.Ct. 2100, 60 L.Ed.2d 668, 675. *McQuillion*, at 901, also citing *Greenholtz* for the same proposition. *McQuillion* did not overrule *Morrall*.

¹³ *Morrall*, at 301, 410.

¹⁴ *Morrall*, at 294, 403–404. See *In re Schoengarth* (Cal. 1967) 425 P.2d 200, in accord.

¹⁵ *In re Seabock* (1983) 140 Cal.App.3d 29, 40, 189 Cal.Rptr. 310, 322, held that the application of current parole suitability guidelines to prisoners convicted of crimes committed prior to July 1, 1977, is not a violation of the ex post facto clause since the rules, consideration of all relevant evidence, have not changed. Although the courts have not expressly analyzed §§ 2402(a) and 2402(b) in this manner, since those sections perform the same function as § 2282(b), the result should be the same.

¹⁶ *Morrall*, at p. 289, 400.

¹⁷ *Seabock*, same citation.

¹⁸ PC § 3046.

¹⁹ PC § 5076.2.

²⁰ *Seabock*, at 40–41, 322. Although a prior case held that the Board's base term matrix violated ex post facto when applied to crimes preceding the revised matrix, *Seabock* noted that the Board's parole determination is comprised of two sequential phases, suitability and then term determination. *Seabock* distinguished *In re Stanworth* (1982) 33 Cal.3d 176, 187 Cal.Rptr. 783, an earlier case, as invalidating retroactive application of the base term matrix and not affecting the parole suitability determination.

²¹ *Seabock* at p. 40, 317.

suitability set forth in 15 CCR §§ 2280, 2281(a), 2281(b), 2401, 2402(a) and 2402(b).

For all these reasons, the Board denies the petition.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

DEPARTMENT OF CHILD SUPPORT SERVICES Case Closure

This Certificate of Compliance adopts the requirements for closing cases pursuant to Title IV-D. (Related OAL files 02-0318-02E, 02-0816-02EE)

Title 22
California Code of Regulations
ADOPT: 110449, 110554, 118020 AMEND:
110385, 12-229, 12-300, 12-302
Filed 03/24/03
Effective 03/24/03
Agency Contact: Lucila Ledesma (916) 464-5087

DEPARTMENT OF FOOD AND AGRICULTURE Oak Mortality Disease Control

This emergency regulation will establish that leaves of camellia (*Camellia japonica*), plants and stems of laurustinus (*Viburnum tinus*), plants and plant parts of andromeda (*Pieris formosa*), and azaleas, are included as regulated articles and commodities for Phytophthora ramorum, the fungus which causes oak mortality disease.

Title 3
California Code of Regulations
AMEND: 3700(c)
Filed 03/20/03
Effective 03/20/03
Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF FOOD AND AGRICULTURE List of Reportable Conditions

This action implements Food and Agriculture Code section 9101 which requires the Department to establish procedures for the selection of "conditions" that pose or may pose significant threats to the public health, animal health, the environment, the food

supply; and the method of preparation and publication for the List of Reportable Conditions for Animals and Animal Products.

Title 3
California Code of Regulations
ADOPT: 797
Filed 03/26/03
Effective 03/26/03
Agency Contact: Nancy Grillo (916) 651-7280

DEPARTMENT OF INSURANCE

Governing Procedure for Hearings not otherwise subject to Regulations

This rulemaking sets forth the general procedure for adjudicative hearings conducted by an administrative law judge from the Department of Insurance.

Title 10
California Code of Regulations
ADOPT: 2700, 2700.1, 2701, 2702
Filed 03/20/03
Effective 04/19/03
Agency Contact:
Andrea L. Biren (415) 538-4626

DEPARTMENT OF INSURANCE

Prelicensing and Continuing Education

Senate Bill No. 63 (ch. 174, stats. 2001) added subdivision (f) to section 1749 of the Insurance Code. The new subdivision (f) provides that an applicant for a fire and casualty broker-agent license who is licensed as a personal lines agent shall complete a minimum of 20 hours prelicensing study as a prerequisite and that the "...curriculum for satisfying this requirement shall be approved by a curriculum board and submitted to the commissioner for final approval. . . ." This filing is a readoption of an emergency regulatory action requiring that any course taken to satisfy this requirement shall be in a classroom and shall use the general subject matter derived from the curriculum specified in the regulation.

Title 10
California Code of Regulations
ADOPT: 2187.4
Filed 03/20/03
Effective 03/20/03
Agency Contact: Natasha R. Ray (916) 492-3559

DEPARTMENT OF MENTAL HEALTH

Approval of Facilities

The Department of Mental Health is amending the captioned section in order to make an editorial correction.

Title 9
California Code of Regulations
AMEND: 821
Filed 03/25/03
Effective 03/25/03
Agency Contact: Steven Appel (916) 654-4027

DEPARTMENT OF SOCIAL SERVICES
Food Stamp Reauthorization Act of 2002

The emergency regulatory action implements the Food Stamp Reauthorization Act of 2002 which restores federal food stamp eligibility for legal non-citizens who have lawfully resided in the United States for five years beginning on the date of entry. (Department of Social Services File Number ORD#1202-26.)

Title MPP
California Code of Regulations
AMEND: 63-405
Filed 03/25/03
Effective 04/01/03
Agency Contact:
Anthony J. Velasquez (916) 657-2586

DEPARTMENT OF TOXIC SUBSTANCES
CONTROL
Private Site Management Performance Standards

The Private Site Management Program is a voluntary program created by Assembly Bill No. 1876 (Stats. 1995, ch. 820). This program is designed to allow the private sector to select a private site manager, to have limited State involvement at a low-threat hazardous substance release site, and to obtain a State designation that no further action is required or a State certification that the site has been premeditated. This regulatory action establishes performance standards for private site managers, who must be Registered Environmental Assessors Class II, private site management team members.

Title 22
California Code of Regulations
ADOPT: 69000, 69000.5, 69001, 69002, 69003, 69004, 69005, 69006, 69007, 69008, 69009, 69010, 69011, 69012, 69013
Filed 03/26/03
Effective 04/25/03
Agency Contact: Joan Ferber (916) 322-6409

DEPARTMENT OF TOXIC SUBSTANCES
CONTROL
Land Use Covenants

This rulemaking adopts regulations that call for the use of restrictive land use covenants as a means of protecting the public health from exposure to hazardous wastes or substances left in place at sites after remedial action.

Title 22
California Code of Regulations
ADOPT: 67391.1
Filed 03/20/03
Effective 04/19/03
Agency Contact: Joan Ferber (916) 322-6409

FISH AND GAME COMMISSION
Spot Prawn Trawl fishing

The regulatory action amends sections 120 and 120.3 of Title 14 of the California Code of Regulations. The amendments prohibit the use of trawl nets for the take of spot prawns and disallows the take of spot prawns as bycatch in the pink shrimp trawl fishery. The amendments are effective upon filing pursuant to Government Code section 11343.4, subdivision (c).

Title 14
California Code of Regulations
AMEND: 120, 120.3
Filed 03/26/03
Effective 03/26/03
Agency Contact: John M. Duffy (916) 653-4899

FISH AND GAME COMMISSION
Deeper Water Nearshore Species Permits

This regulatory action establishes a new permit for the commercial taking of any of eight species of deeper nearshore fish, defines past participation qualification requirements, and specifies a fee of \$125 for the permit.

Title 14
California Code of Regulations
AMEND: 150.02, 150.04
Filed 03/26/03
Effective 03/26/03
Agency Contact: John M. Duffy (916) 653-4899

FRANCHISE TAX BOARD
Audit Practices

This action adopts the Franchise Tax Board's general procedures for audit of tax returns.

Title 18
California Code of Regulations
ADOPT: 19032
Filed 03/25/03
Effective 04/24/03
Agency Contact:
Colleen Berwick (916) 845-3306

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD
Portable Metal Ladders

This rulemaking incorporates by reference the latest ANSI standard for portable metal ladders.

Title 8
California Code of Regulations
AMEND: 3279, 3280
Filed 03/26/03
Effective 04/25/03
Agency Contact: Marley Hart (916) 274-5721

STATE PERSONNEL BOARD

Extension of Probationary Periods

This action would amend the provision for the extension of probationary periods to limit the extension allowed, in order to comply with the notice requirements of Section 52.3, to a maximum of five working days. It would also provide for an extension of the probationary period not to exceed six months in order to address disability accommodation needs under the terms of an agreement between the agency and the employee requesting reasonable accommodation.

Title 2
California Code of Regulations
AMEND: 321
Filed 03/24/03
Effective 03/24/03
Agency Contact: Steve Unger (916) 651-8461

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN NOVEMBER 20, 2002
TO MARCH 26, 2003**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

01/21/03 REPEAL: 121, 122, 123, 124, 125, 125.5, 126, 127, 128, Appendix A

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03/24/03 AMEND: 321
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02/24/03 AMEND: 18312

02/19/03 AMEND: 1859.79, 1859.79.3, 1859.81.1, 1859.83, 1859.107
02/18/03 AMEND: 18991
02/18/03 AMEND: 18704.2
02/13/03 ADOPT: 1859.160, 1859.161, 1859.162, 1859.162.1, 1859.163, 1859.164, 1859.164.1, 1859.165, 1859.166, 1859.166.1, 1859.167, 1859.168, 1859.169, 1859.170, 1859.171 AMEND: 1859.2, 1859.51, 1859.103, 1859.106, 1859.145.1
02/13/03 AMEND: 1859.77.2
02/11/03 AMEND: 1897
02/11/03 AMEND: 1555
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02/03/03 ADOPT: 649.23, 649.24, 649.25
02/03/03 AMEND: 649.11
01/30/03 ADOPT: 18530.2
01/16/03 AMEND: 18705.1
01/16/03 AMEND: 18700
01/16/03 AMEND: 18703.4, 18730, 18940.2, 18942.1, 18943
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01/16/03 ADOPT: 18545
01/13/03 ADOPT: 1866.4.1, 1866.4.2, 1866.4.3, 1866.4.4, 1866.4.6, 1866.4.7, 1866.5.1, 1866.5.2, 1866.5.4, 1866.5.5, 1866.5.6, 1866.5.7, 1866.5.8, 1866.9.1, 1866.12, 1866.13, 1866.14 AMEND: 1866, 1866.1, 1866.2, 1866.3, 1866.4, 1866.5, 1866.5.3, 1866.7, 1866.8, 186
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12/19/02 ADOPT: 1859.200, 1859.201, 1859.202, 1859.203, 1859.204, 1859.205, 1859.206, 1859.207, 1859.208, 1859.209, 1859.210, 1859.211, 1859.212, 1859.213, 1859.214, 1859.215, 1859.216, 1859.217, 1859.218, 1859.218, 1859.219, 1859.220,
12/17/02 ADOPT: 599.723.2
12/10/02 ADOPT: 58700
11/26/02 AMEND: 57.1
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03/20/03 AMEND: 3700(c)

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 02/03/03 AMEND: 3700(c)
 01/28/03 AMEND: 3417(b)
 01/27/03 AMEND: 3700(C)
 01/21/03 ADOPT: 6450, 6450.1, 6450.2, 6450.3, 6784 AMEND: 6000 REPEAL: 6450, 6450.1, 6450.2, 6450.3, 6784
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 12/24/02 ADOPT: 1392.12
 12/12/02 AMEND: 3423(b)
 12/12/02 AMEND: 3417(b)
 12/12/02 AMEND: 3417(b)
 12/10/02 AMEND: 3700(b)
 12/05/02 AMEND: 6550
 12/03/02 AMEND: 6622
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 12/02/02 AMEND: 3423(b)

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03/06/03 AMEND: 8072, 8074
 02/13/03 ADOPT: 10151, 10152, 10153, 10154, 10155, 10156, 10157, 10158, 10159, 10160, 10161, 10162
 01/27/03 ADOPT: 12300, 12301, 12302, 12303, 12304, 12305, 12306, 12307, 12308, 12309, 12310 AMEND: 12300, 12301, 12302, 12303, 12304, 12305, 12306, 12307, 12308, 12309, 12310
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 12/05/02 ADOPT: 12309, 12310 AMEND: 12300, 12301, 12302, 12303, 12305

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 01/30/03 AMEND: 80043
 01/29/03 AMEND: 31000, 31001, 31003, 31004, 31005, 31006, 31007
 01/27/03 ADOPT: 42397, 42397.1, 42397.2, 42397.3, 42397.4, 42397.5, 42397.6, 42397.7, 42397.8, 42397.9, 42397.10, 42397.11
 01/16/03 ADOPT: 9531, 9532
 01/08/03 ADOPT: 11303, 11304, 11305, 11306, 11307, 11308, 11316 AMEND: 11303, 11304, 11305 REPEAL: 4304, 4306, 4311, 4312
 12/23/02 AMEND: 80054.5, 80020.4.1
 12/10/02 ADOPT: 11983.5
 12/09/02 AMEND: 80054
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 01/30/03 AMEND: 336
 01/29/03 ADOPT: 10133.16, 10133.17, 10133.18, 10133.19, 10133.20, 10133.21, 10133.22, 10122.1, 10127.3, 10131.2, 10133.10, 10133.11, 10133.12, 10133.13, 10133.14, 10133.15 AMEND: 10122, 10131, 10133, 10133.2 REPEAL: 10133.1
 01/28/03 AMEND: 1604.5(c)(3) 1604.6(a)
 01/21/03 ADOPT: 339.9 AMEND: 339.8.1
 01/09/03 AMEND: 9771, 9771.2, 9771.66, 9772, 9779, 9779.1, 9779.3, 9779.4, 9779.45
 01/09/03 AMEND: 769
 01/09/03 ADOPT: 412.2 AMEND: 403, 404, 405.1, 411, 411.1, 411.2, 418, 420 REPEAL: 407, 407.1, 407.2, 407.3,
 01/08/03 ADOPT: 46.1
 01/06/03 AMEND: 1527
 01/03/03 AMEND: 344.30
 12/30/02 AMEND: 14300.10, 14300.12, 14300.29
 12/30/02 ADOPT: 10114.1, 10114.2, 10114.3, 10114.4, 101002, 10103.2, 10106.1, 10107.1, 10111.2, 10113.1, 10113.2, 10113.3, 10113.4, 10113.5, 10113.6 AMEND: 10104, 10105, 10106.5, 10108, 10109, 10113, 10114, 10115.1 REPEAL: 10115.3
 12/19/02 AMEND: 5221, 5223,
 12/03/02 AMEND: 4794, 4848, 4850
 12/02/02 AMEND: 3441(a)

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03/25/03 AMEND: 821
 02/20/03 AMEND: 9100
 01/02/03 AMEND: 10355
 12/26/02 ADOPT: 7149.1 AMEND: 7174
 11/26/02 ADOPT: 9526, 9531 AMEND: 9500, 9505, 9515, 9530, 9535

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03/20/03 ADOPT: 2700, 2700.1, 2701, 2702
 03/20/03 ADOPT: 2187.4
 03/13/03 ADOPT: 2020, 2021 AMEND: 250.51
 03/10/03 ADOPT: 2670.1, 2670.2, 2670.3, 2670.4, 2670.5, 2670.6, 2670.7, 2670.8, 2670.9, 2670.10, 2670.11, 2670.12, 2670.13, 2670.14, 2670.17, 2670.18, 2670.19, 2670.20, 2670.21, 2670.22, 2670.23, 2670.24,
 03/10/03 ADOPT: 2175, 2175.1, 2175.2, 2175.3, 2175.4, 2175.5, 2175.6, 2175.7, 2175.8, 2175.9, 2175.10, 2176, 2176.1, 2176.2, 2176.3, 2176.4, 2177, 2177.1, 2177.2,

2177.3, 2177.4, 2177.5, 2177.6, 2177.7,
2177.8, 2177.9, 2177.10, 2177.11,
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03/06/03 AMEND: 2130.3

03/04/03 ADOPT: 260.230, 260.230.1, 260.231.2,
260.231.3, 260.236.1, 260.236.2,
260.237.2 AMEND: 260.231, 260.236,
260.237.1, 260.240, 260.241.2,
260.241.3, 260.241.4, 260.242

02/27/03 ADOPT: 5.6182, 5.6183, 30.30, 30.31,
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30.70, 30.71, 30.72, 30.73, 30.105,
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01/16/03 AMEND: 2498.6

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01/02/03 AMEND: 2509.40, 2509.41, 2509.42,
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12/31/02 AMEND: 2318.6, 2353.1, and 2354.

12/26/02 ADOPT: 2278, 2278.1, 2278.2, 2278.3,
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12/16/02 ADOPT: 1422, 1423

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12/05/02 AMEND: 2632.13(c)

11/22/02 ADOPT: 2689.1, 2689.2, 2689.3, 2689.4,
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2689.18, 2689.19, 2689.20, 2689.21,
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02/03/03 AMEND: 1081(a)(31), 1081(a)(32)

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12/03/02 AMEND: 1001, 1010 REPEAL: 1009

11/26/02 AMEND: 1005

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and 225.69 AMEND: 225.03, 225.09,
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02/18/03 REPEAL: 260.01, 262.00, 262.05

02/06/03 AMEND: 55.17

02/04/03 ADOPT: 551.14, 551.15, 551.16, 551.17
AMEND: 553.40, 595

01/03/03 ADOPT: 2606 AMEND: 2601, 2602,
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03/10/03 ADOPT: 632 AMEND: 630

03/06/03 AMEND: 18464,18465

03/05/03 ADOPT: 18360,18361, 18362, 18363,
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03/04/03 AMEND: 180.2

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03/04/03 ADOPT: 15251

02/27/03 ADOPT: 105.5 AMEND: 195

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01/21/03 ADOPT: 14120 AMEND: 14101, 14102,
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01/17/03 AMEND: 180.15

01/09/03 ADOPT: 52.00, 52.01, 52.02, 52.03,
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01/07/03 AMEND: 630

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12/30/02 AMEND: 150.06, 150.16

12/30/02 AMEND: 150.16

12/26/02 AMEND: 670.2

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12/19/02 AMEND: 11900 and 11901

12/18/02 ADOPT: 3704.1

12/05/02 AMEND: 18419

12/03/02 AMEND: 2200, 2320, 2500
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 870.21 and incorporated by reference
 form FG-OSPR -1972
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 3173.1, 3173.2, 3174, 3175, 3176,
 3176.1, 3176.2, 3176.3, 3176.4, 3177,
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 01/21/03 AMEND: 3075.2
 12/10/02 ADOPT: 3371.1

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 03/13/03 AMEND: 1807.2
 03/06/03 AMEND: 1393
 03/03/03 AMEND: 1397.12
 03/03/03 AMEND: 3340.1
 02/18/03 AMEND: 87, 89.1
 02/13/03 AMEND: 1399.508
 02/11/03 AMEND: 1720.1
 02/11/03 AMEND: 1388, 1392
 02/10/03 AMEND: 1717, 1745
 02/06/03 AMEND: 1082.1
 01/29/03 AMEND: 2542, 2542.1, 2547, and 2547.1
 01/23/03 ADOPT: 1399.153.10 AMEND:
 1399.153, 1399.153.1, 1399.153.2,
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 01/21/03 ADOPT: 1356.6
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 01/06/03 AMEND: 1399.85
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 12/24/02 AMEND: 1399.25, 1399.26, 1399.27,
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 12/23/02 REPEAL: 1387, 1387.3, and 1387.5
 12/23/02 ADOPT: 1398.52 AMEND: 1398.37
 12/23/02 AMEND: 1399.10, 1399.12

12/19/02 AMEND: 1398.3, 1398.20, 1398.21.1,
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 12/16/02 ADOPT: 1937.17 AMEND: 1996, 1996.2
 12/16/02 ADOPT: 1435.15 AMEND: 1435,
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 12/12/02 AMEND: 2310(a)(b)
 12/09/02 ADOPT: 2414 AMEND: 2411, 2418
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 03/13/03 ADOPT: 1031.2, and 1031.3
 02/27/03 AMEND: 60201
 02/27/03 AMEND: 6020, 6025, 6035, 6050, 6051,
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 02/25/03 ADOPT: 6903 (b)
 02/10/03 ADOPT: 30315.10, 30315.20, 30315.22,
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 01/14/03 AMEND: 50413, 50425, 50753, 50766,
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 1031.4, 1031.5 REPEAL: 1034, 1034.1
 12/19/02 AMEND: 57332
 12/05/02 AMEND: 58420
 12/02/02 AMEND: 6508

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 02/04/03 ADOPT: 2570 AMEND: 2500, 2538,
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 02/04/03 AMEND: 122.5
 02/04/03 AMEND: 1616
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 01/15/03 AMEND: 904
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 12/10/02 ADOPT: 1535
 12/10/02 AMEND: 1703
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02/27/03 ADOPT: 51008.1 AMEND: 51104, 51515, 51520, 51521
02/25/03 AMEND: 12705, 12805
02/20/03 AMEND: 100177
02/19/03 AMEND: 12306
02/13/03 ADOPT: 66260.10, 66260.22, 66261.50, 66273.7.1, 66273.7.2, 66273.7.3, 66273.7.4, 66273.7.5, 66273.7.7, 66273.7.8, 66273.7.9, 66273.10, 66273.21, 66273.41 AMEND: 66261.1, 66261.3, 66261.6, 66261.9, 66261.101, 66262.11, 66264.1, 66265.1, 66268.1, 66270.1
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02/03/03 ADOPT: 66260.22, 66260.23, 66273.3, 66273.6, 66273.80, 66273.81, 66273.82, 66273.83, 66273.84, 66273.85, 66273.86, 66273.87, 66273.88, 66273.89, 66273.90 AMEND: 66261.9, 66264.1, 66265.1, 66268.1, 66270.1, 66273.1, 66273.4, 66273.8, 66273.9, 66273.13,
02/03/03 ADOPT: 51200.01 AMEND: 51000.4, 51000.30, 51000.45, 51000.50, 51000.55, 51200, 51451
01/27/03 AMEND: 51510, 515110.1, 51510.2, 51510.3, 515111, 51511.5, 515111.6, 51532.3, 51535, 51535.1, 51544, 54501

01/24/03 AMEND: 84001, 84022, 84061, 84063, 84065, 84800, 84801, 84802, 84802.1, 84803, 84804, 84805, 84806, 84807, 84808

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01/13/03 ADOPT: 100040, 100041, 100031, 100039, 100042, 100043, AMEND: 100031, 100032, 100033, 10034, 100035, 100036, 100038, 100040, 100041 REPEAL: 100037, 100039, 100043

01/07/03 ADOPT: 12203, 12204 AMEND: 12102, 12302, 12304, 12305, 12306, 12401, 12403, 12405, 12501, 12502, 12503, 12504, 12601, 12701, 12709, 12711, 12721, 12808, 12803, 12805, 12821, 12901, 12902, 12903, 14000 REPEAL: 12103, 12104, 12201, 12301

12/24/02 AMEND: 51503, 51503.2, 51504, 51505.2, 51505.3, 51507, 51507.1, 51507.2, 51507.3, 51509, 51509.1, 51514, 51517, 51521, 51527, 51529, 51535.5

12/23/02 ADOPT: 64860

12/23/02 ADOPT: 67900.1, 67900.2, 67900.3, 67900.4, 67900.5, 67900.6, 67900.7, 67900.8, 67900.9, 67900.10, 67900.11, 67900.12

12/09/02 ADOPT: 111550

12/03/02 ADOPT: 119184 REPEAL: Manual of Policies and Procedures Section 12-225.3

12/02/02 AMEND: 66262.54, 66264.71, 66264.72, 66265.71, 66265.72, 66270.30

12/02/02 ADOPT: 110411, 110625, 111110, 111120, 111210, 111220, 111230 REPEAL: MPP Sections 12-000, 12-003, and Appendix I

11/25/02 ADOPT: 66273.6, 66273.80, 66273.81, 99273.82, 66273.83, 66273.84, 66273.85, 66273.86, 66273.87, 66273.88, 66273.89, 66273.90 AMEND: 66271.9, 66273.1, 66273.8, 66273.9

11/25/02 ADOPT: 119015, 119019, 119045, 119069, 119076, 119191, and Forms CSS 4476 (09/02), CSS 4477 (09/02), CSS 4478 (09/02), CSS 4479 (09/02), CSS 4480 (09/02), and CSS 4481 (09/02)

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1300.43.10, 1300.43.13, 1300.43.14,
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